123-83

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1884.

No. ~~551 = 276~~ 31

THE DAVENPORT NATIONAL BANK, PLAINTIFF IN ERROR,

vs.

THE BOARD OF EQUALIZATION IN AND FOR THE CITY OF DAVENPORT TOWNSHIP, SCOTT COUNTY, IOWA, THE COUNTY OF SCOTT IN THE STATE OF IOWA ET AL.

IN ERROR TO THE SUPREME COURT OF THE STATE OF IOWA.

FILED AUGUST 6, 1884.

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No. 897.

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JUDD & DETWEILER, PRINTERS, WASHINGTON.

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1 On the 23d day of Feb., 1884, the Davenport National Bank (app'l't in sup. court of Iowa) filed in the office of the clerk of the sup. court of Iowa its printed abstract of the record, said abstract, together with the endorsements thereon, being in the words and figures following, to wit:

2 "Supreme Court of the State of Iowa. April Term, 1884, at Davenport.

DAVENPORT NATIONAL BANK, Appellant,
vs.
BOARD OF EQUALIZATION, etc., and COUNTY OF SCOTT, Appellees.

Appeal from the Judgment of the Circuit Court Affirming the Action of the Board of Equalization.

A. J. Hirschl, for appellant.
John C. Bills, for appellees.

SAME
vs.
BOARD OF EQUALIZATION, etc., and CITY OF DAVENPORT, Appellees

Submitted on same record as above.
C. M. Waterman, for appellees.

Appellant's Abstract, also Assignment of Errors and Brief.

3 *Petition.*

To the honorable Board of Equalization of Taxes in and for city of Davenport Township, Scott county, Iowa:

Your petitioner, the Davenport National Bank, respectfully shows that it stands assessed upon the assessment roll for 1883, now before your honorable board, as follows, to wit:

Capital	$200,000
Surplus	40,000
	$240,000
35 per cent. of which is assessed	$84,000
Less real estate	15,170
	$68,830

And that therewith is given the particular description of said real estate, as also a list of the shareholders in said bank, with the number of shares and values of same assessed against each.

Your petitioner states that under section 819 of the code of Iowa of 1873 it is made the agent of each of its shareholders, for the purpose of securing the collection of the taxes upon said shareholders for their said shares.

Your petitioner states further that among said shareholders are

the following, on said assessment list for 1883, together with the number of shares and assessed values against each of them, respectively, to wit:

	Albrecht, Otto, three shares	$126
	Allen, Cora M., ten shares	420
	Berryhill, Chas. J., four shares	168
4	Barr, Benj., forty shares	1,680
	Bullen., H. L., ten shares	420
	Ballord, Fr. A., five shares	210
	Ballord, E. S., one hundred and twenty shares	5,040
	Bawden, ——, fifteen shares	630
	Berryhill, Eliza G., thirty-three shares	1,386
	Campbell, Ch., eighteen shares	756
	Collamer Est., twenty shares	840
	Churchill, J. W., eight shares	336
	Davenport, Bailey, fifty-nine shares	2,478
	Dillon, J. F., twenty shares	840
	Decker, C. W., ten shares	420
	Decker, W. H., ten shares	420
	Downs, Willis, ten shares	420
	Ehrsam, Chas., six shares	252
	Fried, Ph., thirteen shares	546
	Fleischman, Isaac, sixty shares	2,520
	Green, Adam, ten shares	430
	Gilman, Arthur, twenty-three shares	966
	Gray, Wm., twelve shares	504
	Goldsmith Est., twenty-five shares	1,050
	Hills, Geo. F., ten shares	420
	Hewitt, L. S., ten shares	420
	Iles, T. J., twenty-five shares	1,050
	Kincaid, J. C., nine shares	378
	Lee, Lydia M., ten shares	420
	Lindsay & Phelps, forty shares	1,680
	Myers, R. D., thirty shares	1,260
	Miller, Severin, six shares	252
	Matthews, H. B., five shares	210
	Mast, C. A., five shares	210
	McManus Est., ten shares	420
	Maxwell, G. E., twenty-six shares	1,092
	Morrell, J. E., five shares	210
	Nutting, Ida E., five shares	210
	Ochs, Fr., ten shares	420
	Olshausen, J. J., five shares	210
	Price, Hiram, two hundred and fifty shares	10,500
5	Preston, A. J., ten shares	420
	Price, Jas., nine shares	378
	Preston, Lillie L., fifteen shares	630
	Petersen, W. D., twenty-four shares	1,008
	Perry, Hannah T., ten shares	420
	Phelps, J. B., ten shares	420

Preston, J. R., ten shares	$420
Richardson, Jennette, ten shares	420
Robinson, Spencer, one share	42
Robinson, D. T., one hundred shares	4,200
Renwick, Wm., one hundred and sixty-five shares	6,930
Renwick, Eliza, Est., ten shares	420
Sherman, Sarah T., forty shares	1,680
Smith, S. F., one hundred shares	4,200
Shuler, John, three shares	126
Schricker, L., sixty-five shares	2,730
Schricker, J. G., fifteen shares	630
Spraker, Mrs. L., three shares	126
Sickels, Robt., twenty shares	840
Paul, James, ten shares	420
Hill, Henry, twenty shares	840
French, Geo. H., fifty shares	2,100
French, Geo. H., trustee, sixteen shares	672
Tiffany, A. S., twenty-four shares	1,008
Thomas, F. L., ten shares	420
Trotter, Mrs. A. H., twenty-two shares	924
Watkins, C. S., twenty-five shares	1,050
Watkins, Mary F., twenty shares	840
Watkins, Mary E., five shares	210
Willis, John, two shares	84
Sanders, M. A., nine shares	378
Vincent, C. S., three shares	126
Haight, W. K., fifty-two shares	2,184
Sears, Isaac H., fifty-two shares	2,184

And your petitioner states, in behalf of itself, in its own corporate capacity, organized under the laws of the United States and the acts of Congress, and states, in behalf of itself, as agent as
6 aforesaid for the said shareholders whose names are above set forth; and your petitioner states further, in behalf of the said shareholders whose names are above set forth, and of each of them, that the amounts set opposite their names on said assessment list, on account of their said shares, are erroneous and excessive and illegal, and your petitioner prays in its own behalf and as agent, and for said shareholders and each of them, that the said amounts against their names, respectively, be cancelled and stricken from said assessment roll or list.

And your petitioner shows that said amounts are erroneous and excessive, because there are now in said township two savings banks, organized under the laws of the State of Iowa, having in capital stock together $350,000, divided into shares of $100 each, said shares being held by individual citizens of said township; said shares are now, and for some years last past have been, from twenty per cent. to fifty per cent. above par; they do now earn, and for some years last past have earned, from ten per cent. to fifteen per cent. annual dividends. Said two banks have, in deposits, $3,200,000 or more, and yet said shares in said savings banks are not taxed on said as-

sessment roll or list, either against said banks or against the shareholders therein, and said shares in said savings banks are, by the laws of the State of Iowa, exempted from any and all taxation.

Your petitioner shows further that there are in said township only two other national banks besides itself; that all three have together $400,000 capital, and not over $1,300,000 deposits, and that, therefore, by reason of the premises, your petitioner and its said above-named shareholders, and each of them, for that their said shares are taxed, and for that said savings banks' shares are not, your petitioner and its said shareholders are "denied the equal protection of the law," contrary to the Fourteenth Amendment to the Constitution of the United States, and the said shares above set forth are taxed "at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens" of said township.

Your petitioner states further that it is ready and willing
7 to be assessed in just the same manner as said savings banks are, under the laws of the State of Iowa, to be assessed and taxed, to wit, upon "its paid-up capital," the tax on same to be "levied upon and paid by the banks, and not the individual stockholders," under section 28, chapter 60, laws of the Fifteenth General Assembly. And your petitioner states further that all its capital stock has been paid up, to wit, $200,000, and that the same is invested in part in real estate, for which real estate your petitioner is properly assessed and taxed, and in great part in non-taxable bonds of the United States, and in other non-taxable forms; and your petitioner is ready to prove that it has not more than ($50,000) fifty thousand dollars of such capital stock invested in property or securities of a taxable nature (aside from real estate).

Your petitioner states further that it is a rule adopted by the assessor and sanctioned by your board, to place on said assessment roll or list not the full cash value of assessed property, but an amount equal to thirty-five per cent. of the same; wherefore your petitioner asks that it be taxed upon thirty-five per cent. of said $50,000, and that there be assessed against it the total of $17,500 upon its personal property, and that there be nothing else assessed or taxed against it (excepting said real estate) or its said shareholders, whose names are above set forth.

Your petitioner states further that it is ready and prepared to prove, by competent testimony, all and any of the facts hereinbefore set forth, and asks for opportunity to do so, and prays again, as aforesaid, for the cancellation of said amounts against said named shareholders, and for the entry of an assessment against your petitioner in the said sum of $17,500 in lieu thereof.

THE DAVENPORT NATIONAL BANK,
By E. S. BALLORD, *its President*,
And G. E. MAXWELL, *its Cashier*.

STATE OF IOWA, }
Scott County, } *ss*:

I, G. E. Maxwell, being first duly sworn, do on oath say: That I am the cashier of the said bank; that I have heard read the

8 foregoing petition, and that the contents thereof are true, as I verily believe.

G. E. MAXWELL.

Subscribed and sworn to by the said G. E. Maxwell, this 7th day of May, 1883, before me.

[SEAL.] A. JACKSON HIRSCHL,
Notary Public in aforesaid County.

The within petition was, by order of the board, on May 7th, 1883, not granted.

OTTO SMITH,
Township Clerk, City of Davenport Township, Scott County, Iowa.

Notice of appeal was duly served.

Answer.

In the Circuit Court of Scott County, State of Iowa.

THE DAVENPORT NATIONAL BANK, Appellant,
vs.
THE BOARD OF EQUALIZATION OF THE TOWNSHIP CITY OF DAVENPORT, Scott County, *et al.*, Appellee.

In the matter of the appeal of the said bank from the action of the said Board of Equalization as to the assessment against said bank for taxes of 1883.

Now comes said defendants, and, for answer to the petition of plaintiffs in this cause, deny each and every allegation in said petition contained.

JOHN C. BILLS,
County Attorney.

Hearing.

The cause came to a hearing upon the foregoing petition and answer before Hon. Chas. H. Phelps, circuit judge, in place
9 of Hon. Nathaniel French, who had been counsel in a similar case before his appointment as judge. As the testimony and evidence was brief, the same, together with all the proceedings had upon the hearing, are given here in full, as follows:

Reporter's Transcript.

In the Circuit Court of Scott County, Iowa.

THE DAVENPORT NATIONAL BANK
vs.
THE BOARD OF EQUALIZATION OF THE TOWNSHIP CITY OF DAVENPORT, THE COUNTY OF SCOTT, *et al.* } 4607.

Before Hon. C. H. Phelps.

A. J. Hirschl, for plaintiff; C. M. Waterman, for city; J. C. Bills, for county; L. P. Dosh, reporter.

E. S. BALLORD sworn:

I am fifty-three years of age; reside in Davenport; keep a drug store; am president of the Davenport National Bank, and have been about four years; have been a stockholder fifteen years and a director ten years; lived in the city twenty-six years.

Q. HIRSHL: State the number of national banks in the city.
A. Three.
Q. What is the aggregate amount of capital stock?
A. $400,000.
Q. How many other banks are there?
A. Two; the German Savings Bank and the Davenport Savings Bank.
Q. What is their aggregate capital?
A. I don't remember; they alter from time to time.
10 Q. Give, to the best of your recollection and belief, the aggregate amount of capital of the two savings banks on January 1st, 1883.
A. I can't answer that question without going to headquarters. I don't remember.
Q. What was the aggregate capital of the three national banks January 1st, 1883?
A. $400,000.
Q. State, if you can, the aggregate deposits of the three national banks January 1st, 1883; give it as near as you can.

(Defendants object; incompetent; not the best evidence, and calling for hearsay; the books of the bank must show.)

(Question withdrawn.)

Q. State, if you can, the capital of the Davenport National Bank, January 1st, 1883.
A. $200,000.
Q. State, if you can, in what that capital was invested at that time.
(By BILLS:) Q. Were you connected with that bank at the time of its organization as a national bank?
A. No, sir.
Q. Were you connected with it prior to the time when all that capital stock was paid, in the $200,000.
A. No, sir.
Q. Then what you testify to, in regard to the payment of that capital stock, and how it was invested at the time, would be from the books and hearsay, wouldn't it?
A. Yes, sir.

(Defendants now object; incompetent, as the books are the best evidence; objection sustained; plaintiff excepts.)

11 (HIRSCHL:) Q. State, if you please, whether the books of the bank have kept what is called a distinct and separate ledger account with capital stock for the accounts of capital stock.

(Defendants object, as the books will show what accounts are kept.)

Q. Are you familiar with the books of the bank?
A. I am not.

(The further examination of this witness postponed until after examination of—

GEO. E. MAXWELL, sworn:

I reside in Davenport; age, 37, and, by occupation, am cashier of the Davenport National Bank, and have been ever since I came here to reside, in June, 1879.

Q. Are you familiar with the books of said bank?
A. Yes, sir.

Q. You will examine the books of the bank and bring with you such books as will show the amount of the capital of said bank. Is there a definite account kept in those books?

(Defendants object, as the books will show for themselves.)

Q. Bring such books as will show the capital account, if any had been kept, such books as will show the capital of the bank, and in what that capital is invested, and has been invested, since the origin of the bank, and especially since January 1st, 1883.

(Witness departs.)

It is conceded that assessments were made and taxes levied substantially as shown in the complaint; *i. e.*, the assessments against the Davenport National Bank, with the list of shareholders.

Counsel for plaintiff asks leave to withdraw so much of the
12 complaint as shows the investment of its capital stock put in Government bonds and real estate, which is granted by the court.

Petitioner asks leave to withdraw so much of its petition as is worded as follows: "Your petitioner states further that it is ready and willing to be assessed in just the same manner," continuing thence to bottom of page, except last two lines; which is granted.

Plaintiff offers in evidence statements of the German Savings Bank and the Davenport Savings Bank, marked Exhibits "A" and "B," which are admitted without objection. It is admitted that these statements are substantially the same as those made January 1st, 1883.

It is conceded that the aggregate deposits of the three national banks of Davenport, in round numbers, January 1st, 1883, and since that time, are and have been $1,300,000.

It is admitted that the assessors assessed all taxable property at thirty-five per cent of its supposed value.

STATE OF IOWA, } ss:
Scott County, }

I, Louis P. Dosh, the official reporter of the circuit court of the

State of Iowa in and for Scott county, do herewith certify that the foregoing four and one-half pages (together with said Exhibits "A" and "B," which exhibits are attached to the original short-hand minutes) constitute and are a full and complete transcript of the original notes in short-hand, and of all of said notes taken at the hearing of the above-mentioned cause; and I certify that this transcript and said notes do contain all and any of the evidence and testimony offered and introduced, as also all that was offered and not introduced upon said hearing, as also all and any objections of counsel and rulings of court.

Witness my hand on this 28th day of January, 1884.

L. P. DOSH, *Reporter.*

13 Said Exhibit "A" was as follows:

German Savings Bank. Of Date April 5th, 1883.

Assets.

Negotiable bills, bonds, notes, etc.		$2,266,327 85
In suit		1,900 00
In judgment		20,351 79
Other		2,419 65
United States bonds		200 00
County, city, and school bonds		43,009 27
Other bonds, etc.		4,113 62
		$2,338,322 18
Real estate		1,635 23
With other banks		19,299 51
Gold coin and coupons of U. S. bonds		104,463 82
Drafts on solvent banks, etc.		30,035 50
Total		$2,493,756 24

Liabilities.

Capital stock paid up		$230,000 00
Unpaid dividends		2,199 50
Time deposits		2,238,443 26
Undivided profits on hand April 1, 1883	$35,596 76	
Profits accrued since	3,414 71	
	$39,011 47	
Less amount of dividends and interest paid	15,897 99	
		23,113 48
Total		$2,493,756 24

(Duly verified.)

14 Said Exhibit " B " was as follows:

Davenport Savings Bank. Of date April 5, 1883.

Assets.

Negotiable bills, bonds, notes, etc.	$1,016,286 61
In judgment	3,924 85
United States bonds on hand	40,000 00
County, city, and school bonds	900 00
	$1,061,111 46
Real estate	71,230 09
Furniture	623 60
With other banks	59,921 54
Gold coin and coupons	1,087 40
Legal tender, etc.	5,419 10
Total	$1,199,393 19

Liabilities.

Capital stock paid up	$120,000 00
Unpaid dividends	3,580 00
Sight deposits	1,055,591 37
Undivided profits on hand April 4, 1883	20,221 85
Total	$1,199,393 19

(Duly verified.)

Decision

Was rendered on January 25th, 1804, adversely to the bank.

Holding that the shares in the savings bank are not taxable, but that, nevertheless, the shares in national banks are.

On January 26th the appellant filed the following

15 *Motion for New Trial.*

Now comes the appellant and moves for a new trial, and for cause states that the decision is not sustained by sufficient evidence, for that it appears that all the material allegations of appellant's petition were duly proved, and that none of the allegations of the answer were proved or attempted to be proved.

II.

And moves also for a new trial, beeause the decision was contrary to law, for that it appears that saving bank shares are not by law taxable, and therefore it should have been decided that appellant's shares are not taxable.

A. J. HIRSCHL,
Attorney for Appellant.

Overruled February 2d, 1884.

CHARLES H. PHELPS, *Judge.*

Judgment

Was rendered and entered on February 2, 1884, affirming the action of the Board of Equalization; also dismissing the appeal of the bank and adjudging the costs in favor of said board and said Scott county.

Bill of Exceptions

Was duly signed by the said Charles H. Phelps, judge, upon the second day of February, 1884, and filed with the clerk of the circuit court on February 11, 1884.

(The bill was not sent back by Judge Phelps until February 11th, and could not be sooner filed. By written agreement, of date January 26th. 1884, filed January 29th, 1884, signed by the attorneys for the appellees and the appellant, thirty days were given in which to file a bill of exceptions.)

Said bill of exceptions contains in full the reporter's notes
16 and transcript, and states that appellant objected and excepted to the decision against it. It also contains the motion for a new trial, with the ruling thereon, and states that appellant objected and excepted to said ruling. It also recites the judgment and states that appellant objected and excepted to the same. Said bill also contains a certificate signed by said judge, stating that it "does contain all the evidence and testimony introdnced and adduced on said hearing, and that it contains all the evidence and testimony offered and received, as also offered and not received, as also all the objections of counsel and rulings thereon."

Notice of appeal to the supreme court was duly served on appellees' attorney, on February 11th, and on the clerk of the court, and filed with him on February 14th.

An agreement in writing to waive the transcript was entered into by the attorneys for appellant and appellees, and filed with the clerk on February 14th.

Assignment of Errors.

The appellant respectfully alleges that there was evident and manifest error committed by the said circuit court, in this:

I. In deciding the case in favor of appellees, and especially in determining that shares of stock in national banks are subject to taxation, although shares of stock in the State savings banks are not.

II. In overruling appellant's motion for new trial. (*a*) In overruling the first ground thereof, viz: That the decision was not sustained by sufficient evidence. (*b*) In overruling the second ground thereof, viz: That the decision was contrary to law.

III. In rendering judgment against the appellant, and especially (*a*) in affirming the action of the Board of Equalization,
17 which board refused to grant appellant's petition. (*b*) In dismissing appellant's appeal from said board to said circuit

court. (*c*) In rendering judgment against appellant and in favor of appellees for the costs.

A. J. HIRSCHL,
Attorney for Appellant.

Endorsed: "Due and legal service accepted this 20th day of February, 1884. John C. Bills, att'y for Scott county and its Board of Equalization. C. M. Waterman, att'y for city of Davenport and its Board of Equalization."

18 & 19 And, after being argued in print and orally by counsel of the respective parties, said cause was submitted upon said abstract, and, after due consideration, the said court, on the 11th day of June, 1884, filed its opinion in writing, the same being in the words and figures following, to wit:

20 DAVENPORT NATIONAL BANK *vs.* BOARD of EQUALIZATION.

Appeal from Scott circuit court.

This is an appeal from an order of the circuit court affirming certain action of the Board of Equalization of the City of Davenport township, Scott county. The party herein named as plaintiff, the Davenport National Bank, applied by petition to board to cancel an assessment for taxes made upon the shares of stock in the bank. This the board refused to do. An appeal having been taken to the circuit court, and the action of the board having been affirmed, the bank now appeals to this court.

A. J. Hirschl for appellant; C. M. Waterman and J. C. Bills for appellees.

ADAMS, J.: The appellant insists that national bank shares are not taxable in Iowa, because there is no valid statute in Iowa under which they can be taxed, and can be none while a certain statutory provision is in force in referenee to the taxation of savings banks. Its position is that since the enactment of the provision chapter 60, section 28, Laws of the Fifteenth General Assembly (McClain's Code, p'g 319), the provision in reference to the taxation of national bank shares, Code, section 818, has become discriminative against national banks, and is therefore in conflict with section 5219 of the Revised Statutes of the United States. The discrimination is said to consist in the fact that under the statute respecting savings banks, the shares are not taxable, but merely the paid up capital, while under Code, section 818, national bank shares are taxable, and that the burden of taxation cast upon national banks under the statute can never be less than that cast upon savings banks, and may be more, and under certain states of facts is more. It contends that the record shows that in the city of Davenport, where the appellant is located, there are savings banks which are subject to less taxation than itself is.

The provision of the statute of the United States designed to prevent discrimination, is in these words: "The taxation (of national bank shares) shall not be at a greater rate than is assessed upon

moneyed capital in the hands of individual citizens of such States." The appellant contends that savings banks shares are moneyed capital in the hands of individual citizens.

The appellees contend that it is not true, as appellant claims, that savings bank shares are not taxable, and even if they are not, that there is no discrimination within the purview of the statute of the United States. The statute in reference to the taxation of savings banks provides that "the paid up capital of all savings banks * * * shall be subject to the same rates of taxation and rules of valuation as other taxable property * * * which taxes shall be levied on and paid by the banks, and not by the individual stockholders." If, as the appellees contend, the paid up capital of savings banks is taxable to the banks, and in addition thereto, the shares are taxable to the shareholders, the appellant has certainly no reason to complain. The burden cast upon national banks is far less than that cast upon savings banks. As to whether savings banks shares are taxable, we do not determine we have reached the conclusion that even if they are not, the taxation of national bank shares is not, within the meaning of the statute, at a greater rate than is assessed upon other moneyed capital. There is no pretense that the taxation is greater than is assessed upon some other moneyed capital, and, in fact, upon moneyed capital generally. The appellant's position is, that if any moneyed capital is favored, national bank capital must be favored to the same extent. But in our opinion each State may as a general proposition provide for the assessment of savings bank capital as well as other property in such mode as it may deem most convenient and effective for the collection of its revenue, and so long as the Legislature appears to have been influenced solely by each consideration, any slight advantage accruing as a mere incident to the mode of assessment should not be deemed a discrimination in rates of such a character that national banks could properly claim that they should escape taxation or be assessed by some mode different from that provided in the national banking act. If any advantage accrues to saving banks from the mode of assessment which has been provided, it appears to us to be a mere incident of the mode, and evincing no desire to favor savings banks' capital. The statute provides for taxing savings banks by assessing the "paid-up capital."
21 This, in the outset at least, should be equivalent to assessing the shares. Later, it might not be strictly so. The shares might come to have something of value by reason of good will and accumulated business. But we cannot regard that of sufficient importance to justify us in making the ruling which the appellant contends for. Property employed in trade and manufactures by incorporated persons is not taxed with reference to any such consideration. The taxation of shares in incorporated companies which may have something of value by reason of good will, is not, we think, regarded as resulting in inequality of taxation as between shareholders and others owning property similarly employed. Some slight latitude is allowed in modes of assessment, demanded by what are deemed controlling considerations, even though they should not

result in absolute equality of taxation. City of Dubuque *vs.* Railroad Co., 47 Iowa, 196.

Besides the appellant's shares, as the evidence shows, were assessed solely with reference to its capital, including its surplus. They were not considered worth more than the amount of the appellant's actual assets. The result was precisely the same to the shareholders that it would have been if the bank capital, including the surplus, had been directly taxed insteadof the shares, unless in taxing the capital a deduction should have been made by reason of the form which a portion of its capital had taken by investment in non-taxable bonds. Aside from the consideration of such deduction, we think that the taxation to which the appellant was subjected was practically the same as is contemplated for savings banks. This position we understand the appellant to deny. Its shares, as we have seen, were estimated with reference to its capital including its surplus. The value of national bank shares would always be increased by reason of the surplus, where there is any, and the national banking act contemplates that there shall be a surplus if earned. Now, while the net profits of savings banks may all be divided and distributed in the form of dividends, it is competent for a savings bank to reserve all or part, and in some instances, doubtless, this is done. Where done, do such accumulated profits escape taxation? We understand that the appellant assumes that they do. But, in our opinion, they do not. We are not inquiring, of course, as to what is actually done in individual cases. That is not material. Our inquiry is as to what the law contemplates. Referring to the statute in reference to the taxation of savings banks, we have to say that possibly it might be thought that it affords some ground for the appellant's theory. It provides for the taxation of the paid-up capital. If we could see any reason for allowing that portion of a savings bank's capital to escape taxation which results from accumulated and reserved earnings, we might thing that by paid-up capital was meant merely so much of the capital employed as resulted from payments made on subscriptions to stock. But even then we would hardly feel justified in holding the accumulated and reserved earnings exempt. Taxation is the rule, and exemption is the exception. Statutes are constructed strictly against exemptions. We cannot properly sustain an exemption upon a mere loose and doubtful implication, and that is certainly the most that can be said of the ground of exemption in question. The paid subscriptions to the stock of a savings bank constitute, in the outset, its working capital. Unpaid subscriptions, while regarded to some extent as in the nature of assets, should not, of course, be taxed. The words, paid-up capital, were probably used in distinction from the broader term, capital, which is sometimes understood as including all subscribed capital, though not paid. Taking the provision in its spirit, we think that we are justified in regarding it as meaning that there shall be subject to taxation all money and moneyed assets resulting from payments made on subscriptions, and payments made on other obligations where such payments are set apart and reserved as capital, or at least as not exempting any part of such capital. If we are correct in this, savings

banks are taxable practically in the same way (aside from one consideration hereafter to be noticed) in which the appellant was taxed, its stock having been estimated solely with reference to its paid subscriptions and its surplus.

We come now to the consideration that the taxation of national bank shares is practically a taxation of its capital, including its non-taxable bonds. It is assumed, and perhaps correctly, that savings banks are entitled to a deduction for non-taxable securities held by them as a part of their capital. In respect to this we have to say in the first place that the national banking act contemplates that shares may be taxed, notwithstanding the practical result above mentioned. We are aware that it might be replied to this, so far as savings banks are concerned, that if national banks are taxed, savings bank shares should be also. But this would not obviate the difficulty in question. Individual owners of national bonds cannot be taxed upon them. If it is objectionable to tax shares of national banks while savings banks are taxed merely upon their capital, with non-taxable securities deducted, then national bank shares cannot be properly taxed while individuals hold such securities. If there is any seeming hardship in this, it should be remembered that national banks have the advantage of their bills put in circulation, representing a large part of their capital, and which are not specifically taxable.

The claim that national bank shares cannot be properly taxed unless the shares of savings banks holding non-taxable securities are also taxed is substantially disposed of, we think, by People *vs.* Commissioners, 4 Wall., 256. In our opinion, the judgment of the circuit court must be affirmed.

21½ And on the same day, June 11th, 1884, judgment was ordered and duly entered of record in the words and figures following, to wit:

"DAVENPORT NAT'L BANK, Appellant,

vs.

BOARD OF EQUALIZATION, etc., *et al.*

Appeal from Scott Circuit Court.

In this cause, the court being fully advised in the premises, file their written opinion affirming the judgment of the circuit court.

It is, therefore, considered by the court that the judgment of the court below be, and it is hereby, affirmed, and that a writ of *procedendo* issue accordingly.

It is further considered by the court that the appellant pay the costs of this appeal, taxed at $41.75, and that execution issue therefor."

22 And afterwards, to wit, on the 12th day of July, 1884, there was filed in the office of the clerk of said court a writ of error; and the original thereof, with endorsements thereon, is hereto attached and transmitted herewith, and a true copy thereof is retained in the office of said clerk.

And on the same day there was filed in the office of said clerk a citation; and the original is hereto attached, with acceptance of service endorsed thereon, and a true copy thereof is retained in the office of said clerk.

23 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the judges of the supreme court of the State of Iowa, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court of the State of Iowa, before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had, in the said suit between The Davenport National Bank, plaintiff and appellant, and The Board of Equalization in & for City of Davenport Township, Scott Co., Iowa; The County of Scott, in the State of Iowa; the Board of Equalization in & for the City of Davenport, Iowa, and The City of Davenport, Iowa, defendants and appellees, said cause being No. 10854 upon the printed docket of said court, wherein was drawn in question the validity of a statute of or an authority exercised under the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of or an authority exercised under said State on the ground of their being repugnant to the Constitution, or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in question the
24 construction of a clause of the Constitution or statute of or commission held under the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, statute, or commission, a manifest error happened, to the great damage of the said The Davenport National Bank, as by its complaint appears, we, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in Washington, on the second Monday of October next, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Morrison R. Waite, Chief Justice of the said Supreme Court, the 5th day of July, in the year of our Lord one thousand eight hundred and eighty-four.

[SEAL.] E. R. MASON,
Clerk of the Circuit Court of the United States,
Southern District of Iowa.

Allowed by— JAS. H. ROTHROCK,
Chief Justice of the Supreme Court of Iowa.

[Endorsed:] U. S. C. C. The Davenport National Bank *vs.* Board of Equalization *et al.* Writ of error. Filed Jul. 12, 1884. G. B. Pray, clerk sup. court. A. J. Hirschl, W. T. Dittoe, att'ys for pl'ff in error.

25 The United States of America to The Board of Equalization in & for the City of Davenport Township, Scott County, Iowa; The County of Scott, in the State of Iowa; The Board of Equalization in & for the City of Davenport, Iowa, and The City of Davenport, Iowa, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Iowa in cause No. 10854 on the printed docket of said court, wherein The Davenport National Bank is plaintiff in error and you are defendants in error, to show cause, if any there be, why the decision and judgment rendered against the said plaintiff in error as in the said writ of error mentioned should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable J. H. Rothrock, chief justice of the said supreme court of the State of Iowa, this 1st day of July, in the year of our Lord one thousand eight hundred and eighty-four.

JAS. H. ROTHROCK,
Chief Justice of the Supreme Court of Iowa.

26 Due and legal service of the foregoing is hereby accepted, this 7th day of July, A. D. 1884.

THE CITY OF DAVENPORT.
By FRED. HEINZ, *Attorney.*

STATE OF IOWA, } ss:
Scott County, }

I, L. T. Eads, being duly sworn, do on oath say: That I served the within citation on Scott County, Iowa, this 10th day of July, 1884, by delivering a true copy of the same to C. C. Campbell, Esq., auditor of said county.

L. T. EADS.

Sworn & subscribed to by the said L. T. Eads, this 10th day of July, 1884, before me.

[SEAL.]

L. J. BROWN,
Notary Public in & for said County.

[Endorsed:] U. S. S. C. The Davenport National Bank *vs.* The Board of Equalization *et al.* Citation with proof of service. Filed Jul. 12, 1884. G. B. Pray, clerk sup. court. A. J. Hirschl, W. T. Dittoe, att'ys for pl'ff in error.

27 And on said July 12th, 1884, there was filed in the office of the clerk of said court a writ of error bond, the original of

which remains lodged with the clerk of said court, and a true copy of the same is hereto attached and made a part of this return.

28 Know all men by these presents, that we, William Renwick, G. E. Maxwell, and E. Huge Schmidt, of Davenport, Scott county, Iowa, are held and firmly bound unto The Board of Equalization in & for City of Davenport Township, Scott County, Iowa; The County of Scott, in the State of Iowa; The Board of Equalization in & for City of Davenport, Iowa, and The City of Davenport, Iowa, in the full and just sum of two hundred dollars, to be paid to the said parties, their certain attorney, successors, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents. Sealed with our seals, and dated this 1st day of July, in the year of our Lord one thousand eight hundred and eighty-four.

Whereas lately at the June term, 1884, at Des Moines, of the supreme court of the State of Iowa, in a suit depending in said court between The Davenport National Bank, appellant, and the above-named parties, appellees, decision & judgment was rendered against the said The Davenport National Bank, and the said The Davenport National Bank having obtained a writ of error, and filed a copy thereof in the clerk's office of the said court to reverse the said decision & judgment in the aforesaid suit, and a citation directed to the said first above-named parties, said appellees, citing and admonishing them to be and appear at a Supreme Court of the United States, to be holden at Washington the second Monday of October next:

Now, the condition of the above obligation is such, that if the said The Davenport National Bank shall prosecute said writ of error to effect, and answer all damages and costs if it fail to make its plea good, then the above obligation to be void; else to remain in full force and virtue.

WM. RENWICK. [SEAL.]
G. E. MAXWELL. [SEAL.]
E. HUGE SCHMIDT. [SEAL.]

Sealed and delivered in presence of—
A. J. HIRSCHL.

Approved by—

JAS. H. ROTHROCK,
Chief Justice of the Supreme Court of Iowa.

[Endorsed:] Davenport National Bank *vs.* Board of Equalization *et al.* Cost bond. Filed Jul. 12, 1884. G. B. Pray, clerk sup. court. W. T. Dittoe, A. J. Hirschl, att'ys for pl'ff in error.

29 STATE OF IOWA, *ss:*

I, G. B. Pray, clerk of the supreme court of Iowa, do hereby certify that the foregoing is a true and correct transcript of the record in the cause hereinbefore entitled, including therein the abstract, copy of opinion, and writ of error bond.

And I further certify that the original citation and writ of error are attached to said transcript as part of this return, and this return is made in response to said writ.

In testimony whereof, witness my signature and the seal of said court hereto affixed, at Des Moines, Iowa, this 29th day of July, 1884.

[SEAL.]

G. B. PRAY,
Cl'k Sup. Court of Iowa.

Endorsed on cover: Iowa supreme court. No. 897. The Davenport National Bank, plaintiffs in error, *vs.* The Board of Equalization in and for the City of Davenport Township, Scott County, Iowa; The County of Scott, in the State of Iowa, *et al.* Filed August 6th, 1884.

123-85

SUPREME COURT OF UNITED STATES,

OCTOBER TERM, 1884.

NO. 897.

THE DAVENPORT NATIONAL BANK, PLAINTIFF IN ERROR,

vs.

THE BOARD OF EQUALIZATION, ETC., ET AL.

FROM THE SUPREME COURT OF THE STATE OF IOWA.

BRIEF AND ARGUMENT FOR PLAINTIFF IN ERROR, BY

A. J. HIRSCHL,
W. T. DITTOE.

JOHN C. BILLS,
FRED. HEINZ,
For Defendants in Error.

And I further certify that the original citation and writ of error are attached to said transcript as part of this return, and this return is made in response to said writ.

In testimony whereof, witness my signature and the seal of said court hereto affixed, at Des Moines, Iowa, this 29th day of July, 1884.

[SEAL.]

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FROM THE SUPREME COURT OF THE STATE OF IOWA

BRIEF FOR PLAINTIFF IN ERROR.

STATEMENT OF THE CASE.

Under the statutes of the State of Iowa the *shares* in the national banks are taxable at their cash value; but the *shares* in the banks organized under the state laws—and known as savings banks—are *not taxable at all.* It is claimed that this is a discrimination, unfavorable to the national banks and their shareholders and, repugnant to section 5219 Rev. Stat. U. S., which prohibits a state from taxing the national bank shares "at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens;" and also repugnant to the 14th amendment, which declares that the state shall not deny to any person "the equal protection of the law."

The plaintiff appeared before the Board of Equalization of Taxes and asked that the taxes (assessed under said statutes), be cancelled, and that the bank be taxed upon its capital (less its bonds and other non-tax-

ables, and less its real estate, which is specifically taxed), the same as said savings banks are by the statutes taxable. The Board of Equalization refused to do this, and on appeal, the circuit court, and then the supreme court, sustained the Board in its action. (Transcript, pp. 1–4 and 9–14).

SPECIFICATION OF ERROR.

There is specified and assigned as error, and also as raising the "federal question," necessary to the jurisdiction of this court, the following, taken from the opinion of the supreme court of Iowa, and forming the basis of their decision, (p. 12 of Transcript) viz:

"We have reached the conclusion that even if they are not" (*i. e.*, if savings banks shares are not taxable), "the taxation of national bank shares is not, within the meaning of the statute, at a greater rate than is assessed upon other moneyed capital."

Plaintiff in error assigns this as evidently erroneous, because,
(1) under said section 5219, Rev. Stat. U. S., a national bank share cannot be taxed, whilst a state (savings) bank share is exempted, by statute, from tax, and because, under said 14th amendment, if a state does not tax the holder of the share in the state (savings) bank,
(2) and does tax the holder of the share in the national bank, it is denying to the latter "the equal protection of the law."

BRIEF OF POINTS AND AUTHORITIES.

I To tax a bank upon its capital is different from and less onerous than taxing it upon its shares.

Van Allen vs. *Assessors*, 3 Wallace, 581.
Hubbard vs. *Supervisors*, 23 Iowa, 133.
Pollard vs. *Zuber*, 65 Ala., 635.

Section 5219 protects the national banks, not only against discriminative *rates* of assessments, but also against discriminative *methods* and rules of *assessment* and of *valuation*.

People vs. *Weaver*, 100 U. S., 545–6.
Pelton vs. *Commercial N. B.*, 101, U. S. 143.

II Under section 5219 Rev. Stat. U. S., the state cannot tax a national bank share at a greater rate than is assessed upon "other moneyed capital in the hands of individuals," and we insist tha

shares in the (*incorporated*) state banks are such "other moneyed capital."

Hepburn vs. *School Directors*, 23 Wallace, 484 (lines 5–10).

They are also the "*like property similarly invested*," referred to in

Adams vs. *Mayor*, 95 U. S., 22 (7–9),

quoting and construing the very words of section 5219, page 20 (lines 11–14).

If the national bank share is taxed higher than the state bank share, then the tax on the former should be reduced to the amount of the tax on the latter.

City National Bank vs. *Paducah* (U. S. C. C.), Ky. 5 Central L. J. 347. *S. C. Thompson's N. B. cases*, 300.

The national bank shares are entitled to all the benefits enjoyed by the state bank shares.

Pollard vs. *Zuber*, 65 Ala., 635.
Miller vs. *Heilbron*, 58 Cal., 133.
Loftin vs. *Citizens N. B.*, 85 Ind., 341.

"As long as they (national banks) are allowed to stand on the same footing with the citizen and *similar state institutions* in the matter of taxation, they have no right to complain."

Boyer's Appeal (Pa.) *Pittsburgh Legal Journal*, N. S. XIV, 429 (end of opinion.)

Consequently when the state bank share is, by statute, exempted from taxation, the holder of the national bank share can claim exemption for his.

As his tax is not void, but only voidable, he must appear before the Board of Equalization, otherwise he has no redress.

Supervisors vs. *Stanley*, 105 U. S., 305.

III The shares in these Iowa savings banks are precisely *similar* to the shares in the national banks.

These (alleged) savings banks are such only in name; they are full fledged banks of discount and deposit; formidable rivals of the national banks, and transact a very heavy business (Transcript, pp. 3, 8–9). The

two savings banks in Davenport have over $3,200,000 deposits, being nearly $2,000,000 *more* than all the *three national banks together* in said city. According to section 9 (5) chapter 60, acts 15th general assembly (McClain's Annotated Statutes, pp. 311 *et seq.*) these savings banks "may discount, purchase, sell, and make loans upon commercial paper, notes, bills of exchange, drafts, or any other personal or public security."

By sections 20, 21, they have the monopoly, no one else can advertise as a savings bank.

This is evidently meant to be the *general* law, for section 31 allows any other bank to re-incorporate as a savings bank by simply filing a declaration to that effect.

A savings bank cannot claim to be a charitable institution.

Sheren vs. *Mendenhall*, 23 Minn., 92.

IV In construing said section 5219, it has been held that national bank shares can be taxed, although "other (**dissimilar**) moneyed capital" is exempt, as for instance:

State and County Bonds —

McLaughlin vs. *Chadwell*, 7 Heisk, Tenn., 397.

Shares in insurance companies —

People vs. *Commissioners*, 4 Wall., 256.

Purchase money, mortgages, and judgments (especially where taxing them would make a double taxation) —

Hepburn vs. *School Directors*, 23 Wall., 480.

Municipal Bonds —

Adams vs. *Mayor*, 95 U. S., 19.

And national bank shares can be taxed when state bank shares are not, *provided*, that the state by *contract*, made *prior* to the act of congress, did disable itself from taxing the state bank shares —

Lionberger vs. *Rouse*, 9 Wall., 473.
City of Richmond vs. *Scott*, 48 Ind., 571.

But in *all* the cases in which the question was raised (under said section 5219), whether national bank shares can be taxed differently from "other

(**similar**) moneyed capital,"—viz: state bank shares—it has been held, *without exception*, that the national bank shares are (under said section 5219), entitled to all the privileges enjoyed by the shares in the state banks. See —

City National Bank vs. *Paducah* (U. S. C. C.), Ky. 5 Central L. J., 347.
S. C. Thompson's N. B. cases, 300.
Pollard vs. *Zuber*, 65 Ala., 635.
Miller vs. *Heilbron*, 58 Cal., 133.
Loftin vs. *Citizens N. B.*, 85 Ind., 341.

V The 14th amendment prohibits discriminative taxation, unless discrimination is necessary, owing to the different natures of the taxables.

County of San Mateo vs. *S. P. R'y Co.*, 13 Fed. Rep., 722.
County of Santa Clara vs. *S. P. R'y Co.*, 18 Fed. Rep., 385.

It will probably not be necessary to examine this point, because if the bank is entitled to relief under section 5219, it does not need to seek it under the 14th amendment.

ARGUMENT.

I To tax a bank upon its capital is different from and less onerous than taxing it upon its shares.

"It is easy to see that this tax on the capital is not an equivalent for a tax on the shares of the stockholders."

Van Allen vs. *Assessors*, 3 Wall., 581 (last line but three).

The bank which is taxed on its *capital* may deduct the following, and be taxed only on the remainder, viz:

(*a*) United States bonds.

German American Savings Bank vs. *Burlington*, 54 Iowa, 609.

(*b*) State, county, or city bonds issued by the same power which imposes a tax, or by a power superior to the one which imposes a tax, *e. g.*, a city cannot tax its own bonds.

Murray vs. *Charleston*, 96 U. S., 432.
Hartman vs. *Greenhow*, 102 U. S., 672.

Neither, of course, could a city tax the bonds of its own state (and probably not of the county in which it is situate); neither could a county tax its own or its state's bonds.

(*c*) School district bonds, which often are, and always may be, declared non-taxable.

(*d*) Treasury notes, or United States notes. (Act of March 2, 1863 — 12 St. at Large, 709).

(*e*) National bank notes.

Horne vs. *Green*, 52 Miss., 452;
contra, *Board of Commissioners* vs. *Elston*, 32 Ind., 27.

(*f*) *Real estate** (which being taxed specifically), is deducted from capital, and only the remainder of capital is then taxed.

The bank of $100,000 capital, which is taxed on its capital, would be taxed *only* on $100,000 although the *shares* might be 50 per cent above par; but the bank which is taxed on its *shares* would, in such case, be taxed on $150,000, because *shares* in Iowa are taxed at their *cash* value. (Code of 1873, section 813).

It matters not, that in the case at bar the state banks appear to have comparatively little of non-taxables, because —

"The constitutional validity of law is to be tested, not by what has "been done under it, but by what may by its authority be done."

Stuart vs. *Palmer*, 74 N. Y., 183, cited in
Al. C. N. B. vs. *Maehr*, 9 F. R., 885.
Hubbard vs. *Supervisors*, 23 Iowa, 130.
Ohio L. I. & T. Co. vs. *Debolt*, 16 How., 416.
Gatch vs. *City of Des Moines* (Iowa), 18 N. W. R., 312.

The tax on the capital was held not an equivalent to the tax on the shares in —

Hubbard vs. *Supervisors*, 23 Iowa, 130.

If the state law authorizes a tax on the *capital* of state organizations, and on the *shares* of the national banks, it is repugnant to section 5219,

*Plaintiff in error makes no complaint upon this point, because, although the statute is *silent upon the topic*, yet the assessors have deducted from the aggregate of shares, so much as is specifically taxed as value of real estate.

because the former could diminish their taxable capital by amount invested in real estate, and the latter could not.

Pollard vs. *Zuber*, 65 Ala., 635.

(It will be remembered that there can be no deducting of non-taxables, *not even of government bonds*, when the tax is upon the *shares*. See *Van Allen* vs. *The Assessors*, 3 Wall., 582.)

It may be conceded that if the two methods of taxation produce essentially the same result, that the plaintiff in error has no just ground of complaint; but it is evident from the discussion thus far, that the result is not the same. It may be conceded, also, that the *rate* of the tax was the same upon the state and national banks in Davenport, but it is urged that nevertheless there is a great discrimination, because —

(*a*) The state bank *share* is not taxed at all, and, because —

(*b*) The methods under which the state banks are taxed provide a different plan of assessment and valuation (viz: reaching only the *capital*), whereas the methods of taxing the national banks reach the *shares;* and we know that section 5219 is designed, not only to prevent a discrimination in *rates*, but also in *assessments* and *valuation*.

People vs. *Weaver*, 100 U. S., 545–6.
Pelton vs. *Commercial N. B.*, 101 U. S., 539.

II Under section 5219 Rev. Stat. U. S., the state cannot tax a national bank share at a greater rate than is assessed upon "other moneyed capital in the hands of individuals."

Since the enactment of section 5219 this court has not passed directly upon the question whether the words "other moneyed capital" mean state bank shares, and whether they mean shares in such state banks as the afore-mentioned savings banks; but this court has said that these words —"other moneyed capital"— would include "other investments in stocks,"

Hepburn vs. *School Directors*, 23 Wall., 484 (9–10),

also, "like property similarly invested."

Adams vs. *Mayor*, 95 U. S., 22 (7–9).

Now, our position is this: that all *incorporated* banks should be taxed alike (although they may be taxed differently from railroad companies,

insurance companies, and others), and our contention is further, that the *shares* of all *incorporated* banks should be taxed alike.

The *shares* are distinct and different from the capital or property of the bank; but a *share* in one bank is just exactly and precisely the same kind of property as is a *share* in any other bank.

In any bank the *share* rises in value in accordance with good management, location, patronage, profits, dividends, accumulations, and falls again with the absence of these elements.

If the money of individuals is kept in their own hands it is simply money, but if thrown together and made the *basis of banking*, and especially of *incorporated* banking, then the *share* held by each is something different from merely his proportionate interest in the face value of the capital.

"The capital of a partnership bears no resemblance to bank stock. "Its owners enjoy no special privileges."

Chicago vs. *Lunt*, 52 Ill., 414.

It is true that the above refers more particularly to national bank shares, but the same reasoning will apply throughout to shares in banks incorporated under state laws, and to the afore-mentioned Iowa savings banks.

They start out with a capital, which they use as a *basis* of banking, *i. e.*, on the strength of which they invite deposits, use and enjoy the profits of the same, are held out to the public by the state as being reliable, for if not so, the auditor must wind them up, and yet shareholders are exempt from liability for the debts of the concern (excepting to a small extent, and no greater than national bank shareholders); this applies to savings and other state institutions, and if the savings have now any advantage, the others *may*, by a mere form of law, at once *re-incorporate themselves as savings banks* (section 31, chapter 60, 15th G. A.), or simply dissolve, and commence anew as savings banks.

It is only on this principle that the *shares* in a *state* bank can be declared subject to taxation, although the entire capital is in bonds; as was held in relation to Corn Exchange Bank, in the case of

People vs. *Commissioners*, 4 Wall., 244.

The capitals of the (incorporated) banks in Iowa are used, not merely as is the money of individuals, to be loaned out, but indeed as a *basis of banking*, on which to enjoy the profits earned by sums which may amount to ten times the original capital; and as already seen, these (so-called) savings banks have the fullest discount powers.

Why then is not a *share* in one of them just exactly the same kind of property as is the *share* in the national bank? And if A's share in the national bank is taxed, and B's share in the (alleged) savings bank is not, then is it not the fact that the taxation on A's moneyed capital (viz: his share), is at a greater rate than is assessed upon "other moneyed capital" (viz: B's share), "in the hands of the individual citizen" (viz: in B's hands)? And if A invests $100 in a national bank share, and B invests $100 in a state bank share — in a share of a (so-called) savings bank in Iowa — have they not both "*similarly invested*" their money? If not, will counsel for defendants kindly give an instance of *how* and *when* their moneys would, or could, be "*similarly invested?*"

But it may be insisted that the national bank has the "circulation," and that therefore a share in such a bank is entirely different from a share in a state organization.

Let us see: In the best event the circulation should only *enhance* the value of the share; why should it make any difference if bank A starts out with $50,000, and has, say, $42,500 given it by the United States; or if bank B starts out with $50,000, and has $42,500 earned in a few years? In either case the *share* would have the same value, with this *exception*, that in the latter bank the shares should be higher, for it absolutely owns the $92.500, and can "divide it up" at any time, whereas bank A has only the *usufruct* of the $42,500 (the circulation), and must account for the principal to the government.

This matter of circulation is a *very small* advantage; many banks do not even draw all they are entitled to. But how little significance has "circulation" when compared with deposits? It is from the latter that dividends are earned; now, national banks are *prohibited* from loaning on real estate, but state institutions may, hence they make long time loans, and by earning interest steadily, are in position to pay interest to depositors; this interest (small though it is), attracts deposits, which in turn make increased dividends to the *shareholders*. So state banks have all the privileges that, and *more* than, the national have.

Moreover if the "circulation" *enhances* the value of the shares, and if the shares are taxed at their *cash* value (as the law requires), it follows that

the State really manages to obtain a tax from the circulation, as indeed it should, *but* equality and equity require (and section 5219 demands) that the State should then also levy the same tax on the savings bank *shares*, which also are *enhanced*, if not by circulation, then by *other* advantages, and may be (and are) much higher than the national bank shares.

But even if the "circulation" is a positive and unequalled advantage, still the State could not therefore impose on the national banks a more onerous system of taxation than it imposes on its own; if it could, it might tax all the railroads which happen to be organized under the acts of congress, and exempt those organized under state laws; or tax all those which receive a bonus, or land grant, or even profitable mail contract from congress, and exempt others; or tax only the *capital* of state railroads (after deducting debts — leaving nothing), and tax the *shares* of those organized under acts of congress.

Even admitting that the "circulation" is a positive advantage, a bonus, a gratuity, yet it was granted by congress, and congress had its own good (or bad) reasons for granting it. Therefore, it is not for the state to *nullify* the privileges thus bestowed, by placing upon its recipient a method of taxation more onerous than that imposed upon the competing state organizations.

Thus, for illustration, we will cite the analogous (railroad) case of —

Worth vs. *W. & W. R. R. Co.*, 89 N. C., 291; S. C., 45, Am. Rep., 679 (682);

in which it appears that by a prior (charter) contract the *shares* in a railroad were exempted from taxation; the railroads which were chartered afterward did not have this privilege. The legislature attempted to make things even by taxing the former company upon its gross earnings, and the latter upon its shares; but the court held that these methods of discriminative taxation could not be used, and that as the former company had had the exemption of its shares validly granted to it, that privilege could not be *counteracted* by a method of taxation which would take from the company another tax, which other tax was not also exacted from the other companies.

Of course, a law taxing all these companies on their gross earnings might have been valid, and so a law taxing all banks on their *shares* would be valid; but we insist that the law taxing the national on their *shares* and the state on their *capital* is not valid (so far as the national is

concerned), although the national may have the advantage of a "circulation."

Different methods of taxation may be used in order to effectively reach different taxables; as for instance, an insurance company may be taxed differently from a lumber company, and an express company differently from a bank; *yet* these *different* methods should be resorted to only to produce equality, and not to produce inequality; so then, in regard to banks, it must be decided that different methods should *not* be used, and for the very good reasons: *First*, as just discussed, that banks are the same kind of taxables, though one may indeed have a "circulation," and, *secondly*, and chiefly, because it is (and has been), within the power of the State of Iowa to make a law — such as existed from 1868 to 1874 in Iowa, and as exists now in *every State of the Union* — by which *all bank shares*, whether national or state, would be taxed. Such a law would be fair and just, absolutely equal and equitable, and could, and should, have been enacted. Hence there is not even the apparent excuse to be made in this case that the discriminative tax was necessary in order to reach differing properties. Quite the contrary, it is unnecessary; instead of producing an equal result, as there would be in taxing all banks on their *shares*, these differing methods produce unequal results, because the national banks, taxed on the aggregate *cash* value of their shares (without deductions), would be taxed much higher than the state banks, taxed on their capitals (which equal only the aggregate of the shares at *par*), which capitals, furthermore, could be (and often are) greatly diminished by the deduction of non-taxables.

In several recent cases this section 5219 is construed, and in *all* cases in which the point was raised whether that section prohibits a State from taxing the national bank *share* any higher than it does the state bank *share*, the decisions were that there is such prohibition.

In the opinion in *City National Bank* vs. *Paducah* (U. S. C. C), Kentucky, 5 Central L. J., 347 (1877), it is said:

"I regard the true construction (of section 5219), to be this: That "when, by local legislation, different rates are prescribed for different "classes of moneyed capital, the rates imposed upon *shares of national* "*banks* should approximate as closely as may be to the rate imposed "upon other moneyed capital of the *same or similar* class, viz: *Shares* "of state banks."

In *Miller* vs. *Heilbron*, 58 California (1881), the court, after reciting the statutes and explaining their operation, says (p. 141):

"Thus a reduction is allowed in ascertaining the assessable value of "the shares of state banks, which is not allowed in ascertaining the "assessable value of the shares of a national bank. It is obvious, there- "fore, that the valuation of shares 'in the hands of individuals' of an "incorporated state bank (where the value of personal property belong- "ing to such bank has been deducted from the value of the entire "stock), must be proportionately less than the valuation of shares of an "incorporated national bank belonging to individuals. * * * * * "(Bottom of page 141). So far as corporations are concerned, the sub- "ject of taxation, in respect to which the taxation must be ratably the "same, are the shares of national banks and the shares of state corpora- "tions — in such case 'in the hands of individuals.'"

In *Pollard* vs. *Zuber*, 65 Alabama, 635 (1880), it was shown that by the statutes state banks could deduct their real estate and be taxed upon the remaining capital. The national banks could not do this. The court shows how a state bank, with $100,000 capital and $50,000 realty, would be taxed only on $50,000 capital; but a national bank would be taxed on the aggregate of shares, viz: $100,000, and also on the realty, and concludes that the act taxing the national bank shares is invalid, saying: "The process of *assessment* on the *capital stock* in the one case, "and on the *shares* in the other, operates with *objectionable partiality*."

In the case of *Loftin* vs. *Citizens N. B.*, 85 Ind., 341 (1882), the court says (page 349): "The law of congress is paramount, and it *ex-* "*pressly forbids discrimination in favor of the banks of the state* against "national banks; and notwithstanding, therefore, the letter of the "statute of the State may require the assessment of national bank stocks "at their full value, without deducting for real estate, the deduction "*being allowed in favor of other banks*, **under the laws of congress "it must be allowed to national banks.** The law of the state is "not entirely superseded, but, to this extent, *must* be regarded as *modi-* "*fied* by the act of congress."

In Boyer's Appeal, Pa. (1883), Pittsburgh Legal Journal N. S. XIV., 430, the court cites *Hepburn* vs. *School Directors*, 23 Wallace, 480, and decides that a national bank share may be taxed although *some kinds* of moneyed capital (*e. g.*, purchase money mortgages) are exempt; *but*, explaining, says: "Not only is some other moneyed capital of a miscel- laneous character taxable for local purposes, but all such capital of the

same character as that which you desire to exempt, that is to say, the *shares of state banks* and **savings institutions."** And again: "No discrimination against the capital invested in national banks can be allowed; if taxed at all, it must be taxed *as is like capital* of the citizens of the state;" and concludes: "As long as they (national banks) are allowed to stand upon the same footing with the citizen, *and similar state institutions*, in the matter of taxation, they have no right to complain."

These cases were all decided about the same time, and *none of them* (with possibly one exception) *cites any of the others*, they are thus of the most convincing weight as being *independent* witnesses, each by separate reasoning arriving at the same conclusion.

Defendants in error have not found a single authority, and cannot find a single one, which declares that under section 5219 a *share* in a national bank can be taxed at any higher rate, or in any different (if more onerous) manner, than the state bank share.

Even in the course of this litigation this position (though constantly urged by them) has never been decided for them.

Thus, for instance, when a case, similar to the one at bar, was before Judge McCrary* he dismissed the bank's petition because he was not satisfied that the state bank shares were exempt from tax, saying that in the absence of a decision by the state supreme court he was disposed to hold that the state statute did not exempt the state bank share from taxation, "especially since to give it the construction contended for "would, to say the least, raise a serious question as to its validity" (meaning, evidently, would raise a serious question as to the validity of that statute under which the national bank shares are taxed). "The courts of the United States are very reluctant to place upon a state statute any construction which will bring it into conflict with a statute of the United States, and, therefore, render it void" (meaning as before).

So, also, in the opinion under review, the Supreme Court of Iowa (Transcript p. 12) does not deny that section 5219 is meant to protect a national bank against discrimination in taxation in favor of a savings bank, and says: "But in our opinion, each state may, as a general proposition, provide for the assessment of savings bank capital, as well as other property, in such mode as it may deem most convenient and effect-

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**Davenport National Bank* vs. *Mittelbuscher*, 15 Federal Reporter, 225.

ive for the collection of its revenue,* and so long as the legislature appears to have been influenced solely by such considerations, any slight advantage accruing as a mere incident to the mode of assessment should not be deemed a discrimination in rates of such character that national banks could properly claim that they should escape taxation, or be assessed by some mode different from that provided in the national bank act."

As to which it may be remarked, *en passant,* that it is a good deal like the excuse of the unfortunate girl who thought that people need not think hard of her, for it was "such a very little baby;" and furthermore, we deny that the advantage is a slight one, but assert again that it is a very decided advantage (please see pp. 5–7 of this argument). And we assert that it makes no difference at all whether the legislature was "influenced solely by such considerations" or not. The test of a law is not what the legislature *meant,* but what it *has done!* The sovereign State of Iowa cannot deny the natural consequences of its own laws. It is bound, the same as an individual, to abide by the results of its own acts, it can not escape on the "didn't-know-it-was-loaded" plea.

Where a discrimination is prohibited, it makes no difference whether it is intentional or not. Thus it was said in a recent case, under which a discriminative tax was set aside as being repugnant to the 14th amendment:

"Unequal taxation, so far as it can be prevented, is, therefore, with "other unequal burdens, prohibited by the amendment. There undoubt-"edly are, and always will be, more or less inequalities in the operation "of all general legislation; arising from the different conditions of per-

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*The court should have been mindful of the words used when construing a clause in the state constitution (which, like section 5219, requires uniformity in taxation), when it was said by Beck, J.: The rule means "that all individuals "and all classes must contribute uniformly with like individuals and like classes "to the burden of taxation."

Warren vs. *Henly*, 31 Iowa, 39 (2.)

Beck and Adams, J. J.: "But inequality in taxation resulting from necessity "* * * is one thing, while inequality intended and avowedly and deliber-"ately provided for by statute is another." The legislature may "adopt dif-"ferent methods of ascertaining values, adapted to the various peculiarities of "the property * * * but this may not be done for the purpose of creating "inequality of taxation. *It may be done to promote equality, not to effect inequality.*"

City of Dubuque vs. *C. D. & M. R. Co.*, 47 Iowa, 209.

It is true this clause of the Iowa constitution is not before the court, and is not involved in this case, but the citations show not only under what circumstances a state may "classify" property (as defendants will argue it can), but also where this right of classification ends.

"sons, from their means, business, or position in life, against which no "foresight can guard. But this is a very different thing, both in pur- "pose and effect, from a carefully devised scheme to produce such ine- "quality, or a scheme, *if not so devised*, **necessarily producing that "result."**

County, etc., vs. *S. P. R. R. Co.*, 18 F. R., 399 (top).

We may be pardoned for a few further remarks on the opinion of the Supreme Court of Iowa, in the case at bar.

They say: "The appellant's position is that, if any moneyed capital is favored, national bank capital must be favored to the same extent"— to which we say, that is not now, never has been, and never will be, our position, *but* our position is, that if "other (*similar*) moneyed capital is favored, then national bank capital must be favored to the same extent." These suggestions may tend also to brush away the fallacious view stated at the conclusion of the opinion in the case at bar (Transcript p. 14) "The claim that national bank shares cannot be taxed unless the shares of savings banks holding non-taxable securities are also taxed, is substantially disposed of, we think, by *People* vs. *Commissioners*, 4 Wall, 256." As to which, we beg to say, that it is not disposed of at all by that case; for in that case the national shares were claimed to be exempt (not because *state bank* shares, but because *insurance* company shares, were); and deciding adversely to this claim, this Court, disposing of the point in about a dozen lines, says: "These institutions" (insurance companies) "are not within the words or the *contemplation* of con- "gress." * * * "There is not much danger to be apprehended of a "discriminating tax in their favor prejudicial to the * * * * rights "of the shareholders in these national bank."

Now can that be extended to embrace other *bank shares?* Had the question been, whether national bank shares should stand on the same footing with other *bank shares*, could the Court have held that they (*state banks*) were not in the "contemplation" of congress, or that there was "not much danger to be apprehended of a discrimination?"

We know the contrary; for the actual danger of discrimination, and that which congress guarantees in section 5219 to protect us against, is the danger from other banks, especially *incorporated* ones, as private banks flourish mostly only in small places, where no kind of incorporated bank is apt to be established. And yet, we see that even against private bankers we have protection, as in—

Pelton vs. *C. N. B.*, 101 U. S., 539.

Why not, then, against incorporated banks? Have we not seen (page 7, *supra*) that their *shares* are "moneyed capital?"

Thus it is evident that there is nothing in this case of *People vs. Commissioners* (decided in 1866) adverse to our claim, but even if there can be any inference drawn therefrom, it must be cancelled by the *later* expressions of this court in the *Hepburn* and *Adams* cases, which show that *shares* are "other moneyed capital," and which especially embrace those where the *investment is similar*; and as we have asked counsel, we now respectfully ask your Honors to state how you can get anything which is more similar to a *bank share*, than is another *bank share?* And it will not do to answer that it must be a share in a state bank of *issue*, for these are long since obsolete, and were so at the dates of the two decisions last above mentioned.

III The shares in these Iowa savings banks are precisely *similar* to the shares in the national banks.

The only difference between these banks is, that the former is organized under the state law and the latter under the act of congress. The powers and privileges of the banks, and the liability of the stockholders is essentially the same; the various suggestions as to the "circulation" have been fully considered hereinbefore (pp. 9–11). There is no reason why the State should favor these banks any more than it does the national. They are neither public charities nor *quasi*-charities. There are savings banks, as in Massachusetts, which, being organized *without capital stock or shareholders*, are operated purely for the benefit of depositors, these might perhaps claim to be organized, at least, as *quasi*-charitable; but these Iowa savings banks, with their privileged *shareholders*, who take the heavy dividends, 10 per cent, 15 per cent, 20 per cent, on their shares, cannot claim to be even *quasi*-charitable merely because they pay the paltry 5 per cent interest on *deposits*. There is nothing charitable in giving the shareholders the cream, and, with a flourish of magnanimity, doling out the skim milk to the depositors.

It is a work of supererogation to support these principles by precedents, still we cite *Sheren* vs. *Mendenhall*, 23 Minnesota, 92, in which it was held that a savings bank could not be incorporated under the statutes relating to charities, although it was urged that such a bank promotes economy and providence in the depositors; and this, simply because "any useful employment directly or indirectly benefits others than the persons employed; but if it be carried on for the *pecuniary profit* of such persons, it is never spoken of as benevolent or charitable.',

(We beg to refer here to further statements on this point, found on pp. 8–11, *supra.*)

IV In construing said section 5219, it has been held that national bank shares can be taxed although "other (**dissimilar**) moneyed capital" is exempt, but in *all* the cases in which the question was raised (under said section 5219), whether national bank shares can be taxed differently from "other (**similar**) moneyed capital," viz: state bank shares, it has been held, *without exception*, that the national bank shares are (under said section 5219), entitled to all the privileges enjoyed by the shares in the state banks.

(The principles in relation to the foregoing have been fully discussed, and the authorities cited on pp. 5–7, 10–14, *supra*, to which we beg to refer.)

The national banks should be as fully protected under said section 5219 (derived from act of congress of *1868*), as they were under the corresponding section in the act of 1864, because they both mean the same thing.

As showing how congress regarded the change in the law in 1868, the following proceedings are given:*

IN THE HOUSE.

GLOBE: Second session, Fortieth Congress, 1867–8, page 801. Part I. The House having before it H. R., 512:

MR. POMEROY: "I will state to the House very briefly how this bill "proposes to change the existing law in regard to taxation of national "banks and currency."

He then narrates the difficulties and misunderstandings as to determining the *place* where shares should be taxed, and continues:

"The committee on banking and currency have had this subject again "under review, and have unanimously instructed me to report the "present bill, which proposes but a *single change* in the existing law."

And shows that the bill provides the exact place, and why, and closes by saying:

"*I believe that covers all that is contained in the bill.*"

*Courts consider the legislative proceedings to determine the meaning of their acts. *People* vs. *Coleman*, 4 Cal, 43; *Ex. Bank* vs. *Hines*, 3 Ohio, St. 1; *Craswell* vs. *Crane*, 7 Barb., 191; *City N. B.* vs. *Paducah*, 5 C. L. J., 347; *Slaughter House Cases*, 16 Wall., 92.

MR. HOLMAN, page 802 * * * concurs as to this rule of place, and says:

"—And it is equally manifest that the tax on these shares ought to be "*the same* as that imposed on other property of the state for all state "and municipal purposes. Nothing could be more just and reasonable. "Indeed, the constitutions of some of the states would compel this to be "done in the absence of any act of congress."

MR. POMEROY, page 803 (first column): "*There is but one propo-*"*sition* in this bill" (the location question.) "There is no other prop-"position embraced in this bill." * * * * * *

"The intention of the bill, as I before said, is to reach this *one specific* "*difficulty*, and I do not propose to open the bill to amend for any other "purpose." (The suggestion was to amend by stating whether shares should be taxed at actual value, etc.)

MR. POMEROY, page 803 (last line, first column), being asked whether moneyed capital meant personal property, answers:

"I do not understand the language as meaning anything different "from the *language of the existing law*."

(A little below the middle of the second column, concerning a proposed amendment that the tax on the *shares* and circulation of national banks and *state banks* shall be the same in the states and by the federal government, he says):

"*I suppose this is provided for in the existing law.*"

IN THE SENATE.

MR. SHERMAN, page 921, reports the House bill (H. R., 512) without amendment.

MR. SHERMAN: "If it is the pleasure of the Senate, as the bill is "short, and *presents but a single point*, we may as well pass it now."

MR. SHERMAN: "Perhaps I ought to explain to the Senate very "briefly the point the House propose to accomplish by this bill." (Ex-"plains the question of location.) "*I believe this is the only point.*"

Every one concedes, that in the act of 1864 congress carefully guarded the national banks against any discriminative taxation favor-

able to the state banks; and that on the strength of this the national banks were organized, capital subscribed, bonds bought, and the "sinews of war" supplied. Is it, then, reasonable to suppose that in four brief years thereafter, viz: in 1868, congress would take off this salutory protection, and allow state banks to grow up right side of the national, with the state favoring its own banks, exempting them from taxes, whilst taxing the national to the fullest extent? It will not do to reply simply by saying that the state banks, being without issue, are but petty concerns; they are formidable rivals of the national banks; they have all the power of discount and deposit that the national have, and do an immense business.

The act of 1864 said, in brief, that national bank shares should not be taxed higher than—

(*a*) other moneyed capital;—

(*b*) shares in state banks.

The utmost that counsel can claim is that the act of 1868 omitted (*b*).

If so, then does not (*a*) still remain?

And if, as stated in the *dictum* in *Lionberger* vs. *Rouse*, (*b*) referred to *banks of issue*, must not (*a*) have referred to banks which were *not* of issue? And if it did so then, and is still on the statute book, why does it not now also refer to banks not of issue?

And, after all, it is very plain that section 5219 in the act of 1868 is not simply the one clause of the act of 1864, but is a condensation (revision) of *both* clauses of the corresponding section in the same. It will be seen that the first clause of the section in the act of 1864 related to the **valuation**, and the second to the **rate**; but section 5219 contains both these elements — which *together* constitute **taxation**. 101 U. S., 158 — and provides: "that the *taxation* shall not be at a greater rate," etc.

V The 14th amendment prohibits discriminative taxation, unless discrimination is necessary, owing to the different natures of the taxables.

It will probably not be necessary to elaborate this point. We feel confident that relief will be granted to the bank under section 5219, and, therefore, it need not be sought under the 14th amendment.

We will, therefore, but briefly suggest that if it is true, as decided in *County of San Mateo* vs. *S. P. R'y Co.*, 13 F. R., 722; and *County of Santa Clara* vs. *S. P. R'y Co.*, 18 F. R., 385, that the 14th amendment is a shield against unequal taxation, and prevents a state from taxing the lands of a railroad by a method different from (and more onerous than) the one imposed on the lands of an individual citizen, *then* we insist that it also prevents the state from taxing the national bank (or its shares) by a method more onerous than the one imposed on a state bank (or its shares).

The opinion in the *San Mateo* case regards the clause of the 14th amendment in pretty much the same light as the courts have the section 5219, namely: Both provide for general and equal tax laws, but neither is meant to deprive the state of the ordinary right of making the usual classifications and exemptions; and to quiet any fear that no discretion is to be left to the legislature, and that state policy is to be entirely ignored, we will here insert the answers to these queries in the able words of Mr. Justice Field: "The fact to which counsel allude, that "certain property is often exempted from taxation by the states, does "not at all militate against this view of the operation of the 14th "amendment in forbidding the imposition of unequal burdens." He then shows that exemptions may still be allowed of property "used for "objects of a public nature." * * * * "Although there may be a "discrimination in the subjects of taxation, still persons of the same "class and *property of the same kind* must generally be subjected alike "to the *same common burden*."

County, etc., vs. *S. P. R. R. Co.*, 18 F. R., 400–401.

We do insist and reiterate that one bank shareholder is a person of the same class with another bank shareholder, and that one bank share is property of the same kind with the other bank share.

Defendant's counsel, in their argument in the State Court, attempt to belittle the opinions of Justice Field and Circuit Judge Sawyer in the *San Mateo* and similar cases, by saying that they are but repetitions of the dissenting opinions in the *Slaughter House cases* (16 Wallace), and others involving the 14th amendment.

But an examination of all these cases will show that the majority of the court had no different view from the minority as to the *scope* of this amendment; the difference was only in regard to its *application* to the *particular* case.

If appellees are right, then we should expect the majority opinion in the *Slaughter House cases* to read somewhat as follows: "As the record "in this cause fails to show that complainants are negroes, the appeal is "dismissed."

Instead of which we *do* find, in the opinion of the majority itself, (p. 72) these words: "We do not say that no one else but the negro can "share in this protection."

Furthermore, if the majority had thought that the 14th amendment is not a shield against monopolies, it would simply have said so, and thus ended the case, instead of inquiring, as it did at great length, into the merits of the case, and then deciding, *not* that the 14th amendment would not cover the case, *but* that the laws complained of did *not create a monopoly*, inasmuch as they were but wise *police regulations*.

The foregoing suggestions show that the majority opinion is just as the opinions in the *San Mateo case*, and just as has been by us shown in this argument, to-wit: That section 5219 and the 14th amendment, whilst requiring a uniformity in the law, yet allow the state to make the usual exemptions, exceptions, and classifications, provided that they be necessary on account of the diversity of the subjects to which they relate. And we take the liberty of repeating that there is no necessity whatsoever of making different taxation laws for the national and state banks; because one uniform law (viz: the one taxing the *shares* in *all* banks,) can be made applicable to them all. Such a law is practical, just, and equal; it reaches the highest possible taxable value of the banks, because, as the *shares* rise in value by reason of accumulations, good location, good will, good management, use of the "circulation," or any other reason, as the *shares* thus rise, the tax rises also, for it is on their *cash*, and not on their *par* value. There is such a uniform and equitable law now in every state of the Union (excepting Iowa). After the decision in *Hubbard* vs. *Supervisors*, 23 Iowa, 130, the law was changed, and all the banks placed on the same footing; but in 1874 (ch. 60, acts of the 15th General Assembly) the present law—as to these savings banks —was enacted. By that the discrimination commenced; for the first few years not much attention was paid to the matter; but now, as these savings banks are extending in number and importance through the state, rivalling the national banks in all respects, and excelling them in some, it has become a serious question with the national banks whether they can allow these competitors to enjoy this unequalled advantage, without protest.*

*An act taxing savings bank shares passed the Senate of the 20th General Assembly, but did not come to a vote in the House.

CONCLUSION.

Plaintiff is not desirous of escaping its due share of the public burdens, but it does want to ascertain whether national banks have any rights or not. If the state can discriminate, as it now does, it can go further, and say that the national bank shares shall be heavily taxed and the state banks be taxed neither on their shares nor on their capital. If national banks can be discriminated against in one way, they can in other ways. If this is the law we want to know it.

We have offered, *though not legally obliged to do so*, to have an accounting taken and to pay such tax as would be assessable upon the appellant were it organized under chapter 60, 15th General Assembly,* and not under the act of congress. It is true, the courts cannot impose a tax. The assessor or Board of Equalization might have imposed a tax on so much of appellant's capital as is not in shape of government bonds or other exempt form. As these officers have not seen fit to impose such tax, it is now too late for the court *legally* to do so; and yet, morally and equitably, the bank should have an assessment made in this shape, and it is still ready to have it done, and offers that it will submit to such an assessment in case the court decrees a cancellation of the tax now resting on its shares.

The national banks are not grasping, and desire no monopoly; they claim that they were called into existence by the Government in a time of darkness and distress; their shareholders advanced money when others doubted, bought the bonds when others feared, and they now ask simply justice.

The banks have steadied the finances of the nation alike during the turbulent times of war and adversity, and the even more dangerous times of peace and sudden prosperity, and they now ask simply justice.

If the act of congress — section 5219 — means anything at all, it certainly must give the national bank an equal standing with the state banks, a chance to do business fully as favorable as that enjoyed by these, their competitors, and an equal tax with them.

If the 14th amendment means anything at all, it must give to federal corporations (and their shareholders), protection against any tax levied by the state upon them at a higher rate, or by a more onerous method, than the tax which is levied on the *similar* state corporations (and their shareholders.)

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*See *Frazer* vs. *Siebern*, 16 Ohio State, 625.

To hold anything less than these principles is to render nugatory the provisions in question, to stultify the thoughtful men who decreed them, and to mock their language.

Respectfully submitted by

A. J. HIRSCHL,
W. T. DITTOE,
Counsel of Plaintiff in Error.

SUPREME COURT OF UNITED STATES,

OCTOBER TERM, 1884.

NO. 897.

THE DAVENPORT NATIONAL BANK, PLAINTIFF IN ERROR,

vs.

THE BOARD OF EQUALIZATION, ET AL.

MOTION TO ADVANCE CASE ON THE DOCKET.

To the Honorable Court:

Plaintiff in error files this, its motion to advance this case on the docket, and states that the matters involved in this case are the following questions, viz: Whether a state can tax the *shares* in national banks whilst it taxes state (savings) banks not on their shares, but only on their capital; whether such discrimination is repugnant to section 5219, Rev. Stat. U. S., or to the fourteenth amendment to the constitution.

The reason for making this application is that a decision of these questions should be had at as early a date as possible, because every national bank and every city and county would be affected by the result; also, because excessive taxes are being levied and collected from year to year, and it should be ascertained whether they are correct.

This case involves but another phase of the general questions discussed in

Supervisors vs. *Stanley.*
Hills vs. *Exchange Bank.*
Evansville Bank vs. *Britton.*

And those causes were deemed of sufficient importance to be advanced. See 105 U. S., page 323 (lines 1–5).

Wherefore, the advancement of the case is respectfully requested.

A. J. HIRSCHL,
W. T. DITTOE,
Counsel for Plaintiff in Error.

Office Supreme Court U. S.
FILED
AUG 22 1887
JAMES. H. McKENNEY.
CLERK.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1887.

No 31.

THE DAVENPORT NATIONAL BANK,
Plaintiff in Error,

vs.

THE BOARD OF EQUALIZATION, ETC., ET AL.
Defendants in Error.

FROM THE SUPREME COURT OF IOWA.

Argument for Defendants in Error,

— BY —

L. M. FISHER,
C. A. FICKE.
E. E. COOK.
Atty's for Defendants in Error.

A. J. HIRSCHL,
W. T. DITTOE,
For Plaintiff in Error.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1887.

No. 31.

THE DAVENPORT NATIONAL BANK, *Plaintiff in Error*,

vs.

THE BOARD OF EQUALIZATION, ETC., ET AL.
Defendants in Error.

FROM THE SUPREME COURT OF THE STATE OF IOWA.

ARGUMENT OF DEFENDANTS IN ERROR.

The defendants in error in the above entitled cause have heretofore filed a motion that the writ of error in this cause be dismissed, for the reasons that the only question at issue in this cause, is as to the liability of plaintiff in error to pay certain taxes assessed under the laws of the State of Iowa — and the affidavits filed show that all of said taxes have been paid in full; and because this court has no jurisdiction to hear and determine any question raised by the record in this proceeding, it being an attempt to turn this court into an assessing tribunal or board of equalization, for state purposes.

We filed with this motion our arguments in support of the same, and this court having ordered the motion to be submitted with the case, we therefore, in accordance with such order, now submit the motion upon the arguments heretofore filed, confidently believing our motion to be well taken, and proceed to the consideration of the cause upon its merits.

STATEMENT.

There is no showing in this case but what the shares in plaintiffs' bank were taxed precisely in the same manner as other forms of moneyed capital. The plaintiff's shareholders, were taxed in the aggregate to the same amount as the bank would have been in case it had been taxed on its capital. There is no showing that any portion of its capital or surplus was invested in government bonds or nontaxable securities. In fact the plaintiff withdrew all the allegations of its petition alleging such investment. See record, page 7.

The shares were not taxed at their actual value. The aggregate of the par value of its capital and surplus was taken, and from this amount a deduction of 35 per cent was made, (this being the per cent of cash value taken for the assessment of property) and from the amount so ascertained a further deduction of the amount of real estate otherwise taxed was made, and thus was obtained the value of the shares in the aggregate. There is no evidence in the record as to the manner in which savings banks or other forms of moneyed capital were taxed. There is no evidence that the capital invested in savings banks forms any considerable portion of the moneyed capital of the State of Iowa. There is no showing that savings bank capital in Iowa is to any extent whatever invested in non-taxaable securities. There is no real grievance alleged or shown. There is merely a moot case in the subject of which plaintiff might possibly hereafter have an interest upon which the decision of this court is desired. This court is asked to relieve not against any wrong done the plaintiff. but against some imaginary wrong which is not even threatened.

By the laws of Iowa, all real and personal property not exempted from taxation by sections 797, 798 and 800, Code of Iowa, is liable to taxation. Code of Iowa, Sec. 801. The only forms of moneyed capital exempted by the sections referred to are the moneys and credits of public corporations and of scien-

tific, literary, benevolent and religious institutions, and societies devoted exclusively to their support. Code of Iowa, Sec. 797. Moneyed capital in all other forms is liable to taxation. Shares in National banks are required to be assessed to the individual owners of the shares, and to be valued at no greater rate than other moneyed capital in the hands of individuals. Code of Iowa, Sec. 818. The stock of corporations and companies must be assessed for taxation at their cash value. Code, Sec. 813. There is no claim that shares in National banks are taxed at a greater rate upon the same valuation than other moneyed capital.

Plaintiffs' only claim is that by the laws of Iowa savings bank shares are not liable to taxation, that the capital of savings banks only is taxable, and therefore national bank shares are not taxable. We deny both the premise and the conclusion.

ARGUMENT.

The plaintiff in this case regards this court as constituted for the trial of moot cases. It has not shown that its bank or its shareholders have been taxed in any respect differently from the capital of savings banks, but claims they might be. It desires not because capital invested in national banks has been taxed at a greater rate than capital in savings banks, but because it might be to have the Iowa law taxing national bank shares declared void, and its bank shares exempted from all taxation. It has shown no real injury, but merely a possible one. No right denied, but that a right might be denied. It seeks to overthrow a just tax because in the future there may be an unjust one. Its case does not rest upon actualities, but possibilities.

This case presents for the decision of this court solely an abstract question of law.

The defendant has undoubtedly been misled by the practice of the Supreme Courts of Iowa and California in this matter.

Hubbard vs. Supervisors, 23 Iowa, 130.

Miller vs Heilbron, 58 Cal., 133.

However, this is not the first time that parties without legal ground have sought the advice of the Supreme Court of the United States. And we do not believe this court will overrule its own decisions in order to follow those of Iowa and California.

The laws of New York allow individuals generally to deduct from the value of their personal property the amount of their debts, but do not allow shareholders in national banks to make any such deduction from the value of their shares. Plaintiff demanded deduction of his debts from the national bank shares owned by him, which was denied by State tribunals ; and it was held by this court that the New York law taxing the national banks was not void, and plaintiff was not exempted from all taxation, but merely entitled to a deduction of his debts, as the law was in conflict with the laws of the United States.

People vs. Weaver, 100 U. S., 545.

Where the U. S. Circuit Court dismissed the bill under a similar law, as last above set forth as to those shareholders not having debts to deduct, the decision was affirmed by this court.

Evansville vs. Brittan, 105 U. S., 322.

The court in last cited case say: "The brief of counsel in various forms repeats the idea that the bill was brought not so much to assert the rights of the stockholders who may have been injured by the enforcement of the statute as to obtain a judicial declaration of this court that the act is void and the attempt to tax the shares of the bank equally so. Having in Supervisors vs. Stanley rejected the proposition and given our reasons for it, we need not repeat them here."

The plaintiff brought suit on account of failure of supervisors to allow him to deduct from the value of his national bank shares the amount of his just debts, the statutes of New York allowing such deduction in the assessments of personal property generally, but not in the case of shares in national banks. It was held that although the statutes of New York were in conflict with those of the United States, nevertheless that the plaintiff "was required to prove that the assessors habitually or by

some rule prescribed by themselves or by some one they were bound to obey, assessed the shares in national banks higher than other moneyed capital generally, and this court decided that having failed to make such proof, that plaintiff's case must fail."

Stanley vs. County of Albany, Supreme Court Reporter, vol. 7, p. 1234.

And again, in Supervisors vs. Stanley, 105 U. S. 305, in passing upon the same statutes this court says: "What is there to render it (the law taxing national bank shares) void as to a shareholder in a national bank, who owes no debts which he can deduct from the assessed value of his shares. The denial of the right does not effect him. He pays the same tax that he would if the law expressly authorized him to make the deduction. What legal interest has he in a question which only effects others? Is a court to set and decide abstract questions of law in which parties before it have no interest, and which, if decided either way, would effect no right of theirs?"

We respectfully inquire what legal interest has the Davenport National Bank in this matter if none of the savings banks of Iowa have any of their capital invested in non-taxable securities? We submit the applicability of the above to this case without further comment.

IS A FEDERAL QUESTION PRESENTED?

This court will not assume jurisdiction of this case under Sec. 709, U. S. Revised Statutes, unless plaintiff has been deprived of some right, privilege or immunity, contrary to the laws of the United States. It is not sufficient to give this court jurisdiction under section 709, that there may be simply a conflict between State and Federal laws.

There must be a controversy involving some right existing under the laws of the United States, which right has been denied in the highest court of the State.

The plaintiff makes no showing whatever that capital invested

in savings banks is taxed otherwise than capital invested in national banks. Plaintiff does not show that savings bank shares are not taxed. Plaintiff does show that national bank shares are taxed with the same results to the shareholders as if its paid up capital including its surplus had been taxed to the bank, except as such result might be affected by a portion of the capital of the bank being invested in non-taxable securities. Whether the plaintiff has invested any of its capital in non-taxable securities is left wholly to presumption. It does not appear that any of the savings banks of Iowa have invested any portion of their capital in non-taxable securities. What right then, existing under the law of the United States, has been denied to plaintiff? At most there is simply a conflict between the State and the Federal law, by which plaintiff has not been at all injured or affected.

Section 5219, Revised Statutes, requires national bank shares to be assessed to the owner thereof at the place where the bank is located and not elsewhere.

The statute of Massachusetts passed to carry into effect the power of taxing national bank shares, provided that such shares should be assessed and taxed at the place where the owner of the same resided.

One Austin, residing in Boston and owning shares in national banks assessed there, refused to pay taxes on his national bank shares on the ground that there was a conflict between the State and Federal law and therefore the State law was void and all national bank shares were exempt from taxation in that State.

The State Supreme Court decided adversely to Austin's claim, and he took a writ of error to this court upon this question, under Sec. 25 of the Judiciary act. This court decided the question against the plaintiff in error, and in doing so said: "It is not denied that this assessment of Austin was in conformity of the act of Congress, but it is insisted that the taxes assessed were illegal and void, because the statute of the State requires that they should be assessed at the place of residence of the shareholder without reference to the location of the bank.

The only question of Federal jurisdiction and ot which this court can take cognizance is whether plaintiff has been deprived of any right contrary to the act of Congress upon which he relied for protection. Whether in a different case arising upon a different state of facts, the statute may not produce different results in conflict with the act of Congress which this court will be bound to revise, is an inquiry upon which we are not called upon to enter. *We can only consider the statute in connection with the case before us.* Having ascertained that it has wrought no effect which the act forbids, our jurisdiction is at an end. The 25th section of Judiciary act is explicit upon this subject." (Above italics are ours.)

Austin vs. Aldermen, 7th, Wallace, 694.

We therefore claim that there is no Federal question involved in this case and the writ of error must be dismissed.

ARE SAVINGS BANK SHARES TAXABLE?

Savings banks are corporations. Sec. 1, chapter 60, laws of 15th Gen. Ass., McClain's Code, p. 311.

"The stock of corporations and companies shall be assessed at their cash value."

Code of Iowa, Sec. 813.

Moreover, taxation is the rule and exemption the exception, in considering the liability of property to taxation. Statutes are construed strictly against exemption.

Henkle vs. Town of Keota, 68 Ia., 334.

Davenport vs. Board of Equalization, 64 Ia., 55.

There is no statute of Iowa exempting the shares of savings banks from taxation. The exemption is only claimed by plaintiff from the following provision of the savings bank law:

Sec. 28, chapter 60, Laws 15th Gen. Ass., McLain's Code, p. 319.

Sec. 28. "The paid up capital of all savings banks organized and doing business under this act shall be subject to the same rates of taxation and rules of valuation as other taxable prop-

erty under the revenue laws of this State, which taxes shall be levied upon the bank and not the individual stockholders, and the General Assembly shall never impose any greater tax upon property employed in banking, under this act, than is or may be imposed upon the property of individuals. The franchise of such banks, the savings and funds deposited therein, and the mortgages and other securities, wherever the same are invested, are not to be taxed, but are expressly exempted therefrom and may be omitted from assessments of the bank required by the revenue laws of this State."

This section must be construed in connection with the sections which provide that all real and personal property shall be assessed, and that shares of stock shall be assessed at their cash value. Such being the rule of construction, it is evident that Sec. 28 does not exempt the shares of stock. It nowhere mentions the shares or exempts the shareholders from tax on them. The object of the statute was to provide that the bank itself should pay a tax on the actual amount of its capital, but nothing on its franchises and deposits.

It moreover only provides that the taxes upon the paid up capital of savings banks shall not be levied on the stockholders. Does this provision prohibit the taxation of shares in savings banks? It does not do so in express terms. Does it do so by implication? It can only exempt the savings bank shares in the event that under the Iowa laws the shares and the capital represent the same interest, that there would otherwise result double taxation.

Now the capital belongs to the bank and the shares to the stockholders. The bank is a corporation, a separate, distinct person in law from the stockholder. The corporation and the shareholder are as separate and distinct persons as the mortgagee and the mortgagor of real property. There is no question but what the mortgagor and mortgagee of real property may both be taxed, the mortgagor to the full value of the land and the mortgagee to the full amount of his mortgage, notwithstanding their interests cover the same real estate. But the

plaintiff will claim that the case of Hubbard vs. the Supervisors, 23 Iowa, 133, determines that savings bank shares are exempt from taxation. In this case a question arose as to whether, under the general banking law of Iowa, (now repealed) the shares in banks incorporated under that law were liable to taxation. It was not a construction of the savings bank law. The law in this case construed was section 1598 of chapter 65 of the revision of 1860. This section provided that the shares of the corporation shall be personal property and shall be transferrable only on the books of the company, and that every person becoming a shareholder by such transfer shall, in proportion to his shares, succeed to all the rights of the shareholder by whom the transfer was made. Such corporation shall not be dissolved by the death or insanity of any shareholder therein when there is more than one shareholder in such corporation.

This section then further provides that "taxes shall be levied on and paid by the corporation, and not upon the individual stockholders."

This section, determining the status of shares and rights of shareholders, and providing that taxes shall not be levied upon stockholders, is wholly different from a section making no reference to shares or shareholders, which declares that the taxes on the paid up capital of savings banks shall be levied on the corporation and not upon the stockholders. There is a difference between the total exemption of the shareholders from all taxes and the exemption of the stockholders from liability for a tax on the capital of the corporation. It is by virtue only of the express exemption of the shares in State banks from all taxation under section 1598 of the revision, that the decision in Hubbard vs. Supervisors can be reconciled with the later decisions of the Supreme Court of Iowa. In this case the opinion of the court recites the laws providing that the stock of corporations shall be assessed at their cash value; that all private property is to be assessed in the name of the owner thereof and each owner shall be required to pay taxes thereon, the asses-

sors must have books in which to enter the property taxable to any individual, including the amount of stock or shares in any corporation or company not required by law to be otherwise listed or taxed, and that "aside from exemptions not material to be noted, all property within the State, including that belonging to any bank or company * * * is subject to taxation, (all of which provisions are still in force) and the portion of section 1598 of the general banking act, providing that taxes shall be levied on and paid by the corporation, and not upon the individuals."

The court holds that because shares in national banks are made taxable by special legislation, it tends to show that prior to such special legislation shares in banking corporations were not subject as such to taxation. It holds that by Iowa law these State banks of issue are taxable property and that shares of stock in them are not taxable.

The court holds the taxation of the shares and the capital would be double taxation, which should not be allowed unless clearly expressed by the statute.

"Now no one, as it seems to us, from our entire legislation can fairly conclude that it was ever intended to tax both. It is not said so in terms, certainly. It would not be claimed as to partnership property and the interest of the individual members therein, and why any more in a corporation?

Not only so, but the law itself quite clearly negatives such intention. How, otherwise, are we to understand the provision that taxes shall be levied on and paid by the corporation and not the individual stockholders, entirely harmonizing with the declaration that the individual shall pay taxes on his *shares* in a corporation *not otherwise taxed*. There can be no question that the tax is not only to be paid by the bank but levied on it and not upon the stockholders."

Hubbard vs. Supervisors, *supra*.

We quote so fully from this opinion to show that its reasoning and force have been completely overthrown by the later decisions of the same court.

The dissenting opinion of Judge Cole expresses the doctrine of this State at the present time, the general banking law having been long since repealed:

"Our bank laws provide for the taxation of the *capital* of our State banks. Our revenue law (Rev. Sec. 732) also provides for the taxation of stock or shares in any corporation. The general principle is that all property shall be equally taxed, and our statute has expressly provided that all property, real and personal, within the State, is subject to taxation (Rev. Sec. 712) excepting certain exempt articles and also property held for religious, charitable and educational purposes, etc. By the decision of the Supreme Court of the United States, shares of bank stock are property other and different from the capital, hence are liable to taxation. I should therefore invert the rule of the majority opinion, and instead of holding that the legislative intent to tax them must be made clear and certain, I would hold that, being property, they are legitimately liable to taxation and should be taxed unless the legislative intent to exempt them is made clear and certain."

Same case, 23 Ia., p. 153.

In Morseman vs. Younkin, 27 Ia., p. 350, the question again came before the court, Section 1598 having been repealed. The court held in direct opposition to its decision last, that bank shares were taxable within the meaning of the statutes.

In Cook vs. Burlington, 59 Ia., p. 251, the last remnant of the decision in Hubbard vs. Supervisors, *supra*, was swept away. The court held that the assessment of all its property to a corporation and the payment of the taxes thereon does not exempt the shares of stock from assessment and that they are taxable under Sec. 813, Code of Iowa, now in force, which provides stock in corporations and companies shall be taxed at their cash value.

The court say: "It is idle to contend in the face of this explicit language that the legislature has not required that stock in corporations shall be assessed."

"It must be conceded that the taxation of the property of the corporation and also of the stock bears no resemblance to taxing the same tract twice to the same person. That would be double taxation, which would not be allowed in any State of the Union. But the case at bar is far different. The corporation is a person distinct from the stockholder. We think the Circuit Court correctly determined that the shares of stock were taxable. And if the public interest of this State requires that either the property of a corporation of this character or the stock therein be exempt from taxation, that relief must come from the law-making power."

And thus the court hold that both the property and the stock of corporations are liable to taxation, that the taxation of the one does not exempt the other, and that the taxation of both does not constitute double taxation.

This is decisive of the present case, where it is claimed that the taxation of the capital to the savings bank must exempt the stock because double taxation would otherwise result.

But, if possible, even more decisive of the question at issue now, is the case of Henkle vs. The Town of Keota, 68 Ia., 334. This was the case of a bank incorporated under the general incorporation laws of Iowa (and all banks incorporated in this State are so incorporated except savings banks) which was taxed on its property; and at the same time the stockholders were taxed on their stock to the value of their shares. The stockholders appeal to the Supreme Court. The court, after stating that taxation is the rule and exemption therefrom constitutes the exception, states that "it is not claimed that shares in such banks are especially exempted; that section 801 provides that all property, real and personal, not exempt by statute is subject to taxation; that bank shares must be conceded to be property." And further, quoting Section 813 of the Code providing that State incorporations and companies shall be assessed at their cash value, and citing Des Moines Water Co.'s appeal, 48 Ia., 324, and Cook vs. Burlington, *supra*, say, "under these statutes and these decisions it must be assumed that shares in at least

some corporations can be assessed to the owners. Now is there any provision of the statute which takes shares in a bank out of this rule? Counsel for appellee contends there is and relies on Section 821 of the Code."

"All taxable property shall be taxed each year, and personal property shall be listed and assessed in the name of the owner thereof on the first day of January, except moneys and credits of associations organized under the general incorporation laws of the State for the purpose of transacting a banking business, and the moneys and credits of private bankers who have loaned money and bought notes or other securities. In every such instance the average value of moneys and credits which have been in the possession or under the control of the person making the list shall be listed for taxation." Clearly it is not provided in express terms or by necessary implication that shares in banking institutions cannot be taxed to the owners. "The statutes make no reference thereto, but apply exclusively to the moneys and credits, or property of the corporation. The shares therein do not belong to the corporation, but to the persons entitled thereto." "They are his individual property, on which it may be supposed he receives an income in dividends or profits of the institution."

The Iowa Supreme Court in this language declares that there is no conflict between taxing the property, moneys and credits of incorporated banks, under Section 812 of the Code, and taxing the shares of such bank, under Sec. 813 of the Code, that there is no double taxation in such cases; that there is no exemption of either by implication. Is it a clearer case of double taxation to tax the capital to the bank and the stock to the stockholders, than to tax an incorporated bank on all its property and then tax the stock to the stockholders?

Upon what reason can it then be claimed that Section 28, chapter 60, repeals Section 813, and that there is a conflict between taxing the capital to the bank and the shares to the shareholders? That there would in such case be double taxation, and that shares in savings banks are exempted by implication from taxation.

It was also decided in this case that Section 821 of the Code, which, as Section 732 of the revision, was construed in Hubbard vs. Supervisors as being inconsistent with the taxing of both shares and property of State banks, for the reason that otherwise there would be double taxation, does not exempt the shares in such banks. This is the section that provides that the assessor's books shall be prepared for the entry of certain matters among which are the amount of stock or shares in any corporation or company not required by law to be otherwise listed or taxed. The court say: "This provision alone does not exempt the shares nor provide that they shall not be taxed to the owner. It has no reference to nor does it limit the force of Section 813 as counsel contend. Before Section 821 can have any effect there must be some law found which requires them to be otherwise listed and taxed. As we have seen, there is a statute which requires these shares to be taxed, and as taxation is the rule some provision must be found which requires them to be otherwise listed and taxed. Such a statute was in force and held applicable in Hubbard vs. Supervisors, 23 Ia., 130, but our attention has not been called to any such statute, unless it be the provision that banking corporations, like other corporations, shall be assessed and taxed, that is to say, the property belonging to the corporation shall be taxed. But as we have seen, shares in a corporation are the property of the persons holding them. They cannot be taxed to the corporation, and the statute does not so provide, but it does provide they shall be taxed to their owners."

Thus our Supreme Court has decided again that our banks are liable to taxation on their property to the bank and on the stock to the stockholders, and that the taxation of the one is not taxation of the other, and that there is no implication from the taxation of the one that the other is exempt, but that the stock and property of the bank are separate property, belonging to different persons, and the law favors and requires the taxation of both. In Hubbard vs. Supervisors, *supra*, the court held the shares to be taxed by the taxation of the corporation.

In this case the court holds precisely the contrary. Hubbard vs. Supervisors can only have force on the theory that Section 1598 of the revision expressly exempts the stockholders from taxation, which Section 28 of chapter 60 certainly does not do.

When the legislature of Iowa desires to exempt property from taxation it does not leave the matter to construction or implication. The amendment of Section 816 of the Code made by the 18th General Assembly, referring to manufacturing corporations provides that such corporations shall be taxed on their property and that "the owners of capital stock of manufacturing corporations as herein provided, having listed their property as above directed, shall be exempt from assessment and taxation."

These decisions of the Supreme Court of Iowa are in complete harmony with those of this court on these questions. In Van Allen vs. the Assessors, 3 Wallace, 573, it was decided that a tax on shares is not a tax on the capital of the bank. "The corporation is the legal owner of the property of the bank. The interest of the shareholder is distinct and independent property from the corporation."

"Nothing (against the power of taxation) is to be taken by inference or presumption." "Where a doubt arises as to the existence of restrictions, it must be decided in favor of the State."

Bank vs. Tennessee, 104 U. S., 493.

The capital stock and the shares may both be taxed and it is not double taxation.

Farrington vs. Tennessee, 95 U. S., 687.

"When exemption is claimed it must be shown undoubtedly to exist. At the outset every presumption is against it."

Same case.

"Whoever, therefore, claims its surrender (power of taxation) must show it in language which will admit of no other reasonable construction. If a doubt arises as to intent it must be solved in favor of the State."

Railroad Co. vs. Hoge, 99 U. S., 348.

Such being the statutes of Iowa and the decisions of its Supreme Court and of this court, we submit that the plaintiff has wholly failed to maintain the burden of his case. He has failed to show that shares in savings banks are not taxed. He has failed to show any exemption of such shares, either by the statutes or by the decisions of the State. Section 28, chapter 60, must be construed together with the sections that provide that all real and personal property shall be assessed and shares in corporations shall be taxed at their cash value. It can only be thus construed and allow all the sections their full force by holding that both shares and the capital are taxable. To hold otherwise the stock of savings banks must be exempted from taxation by implication alone, contrary to the sections of the statute providing that it shall be taxed, and contrary to decisions of the Iowa Supreme Court and of this court.

Plaintiff would have made a much stronger argument had it claimed that deposits which Section 28, chapter 60, exempted from taxation to the bank are wholly exempted from taxation, notwithstanding Section 801 of the Code subjects moneys on deposit to taxation, and moneys in savings and all banks are taxed to the depositors. The Supreme Court of Iowa declined to pass on the liability of savings bank shares for the reason that holding that there was no substantial difference between the taxation of savings banks on their paid up capital and the taxation of national banks on their shares, it was unnecessary to pass upon other points. The argument of the Supreme Court of Iowa is not here for consideration. If there has been no discrimination in taxation against national banks as compared with savings banks, and none is threatened, we believe the court must find with us. Before Healey vs. Keota, *supra*, was decided, this same question was presented by the same ~~parties~~ to Judge McCrary in the United States Circuit Court, who held that shares in savings banks were taxable under our law.

Davenport National Bank vs. Mittelbuscher, 4th McCrary, ~~318~~ 861

And, unless this court shall reverse the principles decided by it in the cases above cited, and further, the decisions of the Iowa Supreme Court on questions precisely similar, it must concur in that opinion.

IF SAVINGS BANK SHARES ARE NON-TAXABLE, IS THERE A SUBSTANTIAL DISCRIMINATION AGAINST NATIONAL BANK SHARES?

But supposing that plaintiff has an actual and not a moot case, and that savings banks are taxable only on their paid up capital, and that shares in savings banks are exempt, we claim there is no substantial discrimination against national bank shares. We contend that even in such case the savings bank corporations are themselves taxed in such manner and to such an extent that the shares of stock therein are in fact subject to a tax substantially equivalent to that which is assessed upon national bank shares.

Section 5219, Revised Statutes, enacted in 1868, provides, "nothing herein shall prevent all the shares in any association from being included in the valuation of the personal property of the owner or holder of such shares, in assessing taxes imposed by authority of the State within which the association is located, but the legislature of each State may determine and direct the manner and place of taxing all the shares of banking associations located within the State, subject only to the two restrictions that the taxation shall not be at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens of such State, and that the shares of any national bank owned by non-residents of any State shall be taxed in the city or town where the bank is located and not elsewhere. Nothing herein shall be construed to exempt the real property of such associations from either State, County or municipal taxes to the same extent according to value as other real property is taxed."

This section, as originally enacted (13 St. 112 in 1864), contained this additional restriction upon the State taxation of national bank shares: "Provided, further, that the tax so im-

posed under the laws of any State, upon the shares of any of the associations authorized by this act, shall not exceed the rate imposed upon the shares of any of the banks organized under authority of the State, where such association is located," which *proviso* was omitted in and repealed by the revised act of 1868. By this last *proviso* the rule of taxing State bank shares was made a test of the taxation of national bank shares, and when this *proviso* was repealed the provision as to place of taxing, not contained in the act of 1864, was added. The repeal of the *proviso* as to taxing State and national bank shares left the restriction on the taxing power of the State that taxation shall not be at a greater rate than is assessed upon other moneyed capital. Does the law mean the same now as when it contained both *provisos*, or does it give the States greater latitude? Plaintiff contends that the statute means precisely the same, and to support that construction quotes the language used by two members of the House and one member of the Senate in the debate upon the passage of the bill in Congress. These quotations may express the views of three out of four hundred members of Congress who voted upon this measure, but that they are admissible to show the views and purpose of Congress stands neither in law nor reason.

"In construing an act of Congress, this court will not recur to the views of individual members, uttered in debate, nor consider the motives which actuated them, but will recur to the history of the times to ascertain its reasons as well as the meaning of its provisions."

United States vs. U. P. R. R. Co., 91 U. S., 72.

The national bank act was passed when the war of the rebellion was at its height, when the Federal treasury was drained of its resources and when the burden of public taxation could not be safely increased. Its purpose was by the organization of the national banks to furnish a sound currency for the people and at the same time a reliable market for the bonds of the government. There was a strong minority of the people in all the loyal States, who looked with disfavor upon the conquest of the

rebellion by force, and were desirous of crippling all the agencies of the government for that purpose. At this time there were numerous State banks existing in all the States of the Union, issuing current money which was the principal currency of the country. It was feared that State legislation would be hostile to corporations created by the United States, to capital invested in national banks, and would favor in taxation other forms of capital. It was more greatly feared that these State banks of issue would come into hostile and dangerous competition with the national banks, and that the States would legislate in reference to taxation, so as to prefer the capital invested in State banks and to tax at a greater rate the capi tal invested in national banks than that invested in State banks. It was under these circumstances and for the purpose of preventing the evils feared that Congress placed the restrictions contained in the two *provisos* upon the power of the States to tax shares in national banks.

If these two *provisos* meant the same and the law is the same as it now stands from the beginning, what was the necessity of the last *proviso*, and what force was to be given it? We claim that Congress did not enact two *provisos* when one would have answered the purpose, and that the second *proviso* was not meaningless. The first *proviso* was intended to prevent the unequal taxation of national bank shares and other moneyed capital generally, but at the same time it was intended to be elastic in its nature, to allow the States some latitude in legislation upon the question of taxing national bank shares and other money. It was not intended to exempt national bank shares because some other forms of moneyed capital were exempt, or to require that national bank shares should not be taxed at greater rate than some other forms of moneyed capital. Congress knew that allowing this latitude to the States was not dangerous as long as this court was the final arbiter to determine any questions of conflict between State legislation and Section 5219, Revised Statutes.

The second *proviso* was intended to overthrow all danger

of hostile legislation in favor of a dangerous competitor already in the field, and was intended to be and has been construed to be inflexible and absolute in its provisions, and to unalterably require that shares in State banks should be taxed in precisely the same manner as national bank shares. In 1868 the national banking system had proved a great success; it had won to the highest degree the confidence of the people of the States; it had secured the repeal of nearly all the laws of the States creating banks of issue; its competition had not left a single State bank of issue existing in the United States. When, in 1868 Congress revised the national bank act, the reason and purpose of the second *proviso* having ceased, it was therefore omitted from the revised act.

Not only does this second *proviso* fail to apply to this case from the fact that its reason has ceased and that it has been repealed, but this *proviso* applied to shares in State banks of issue only, and not to shares in all State banks.

Lionberger vs. Rouse, 9 Wall., 468.

Mercantile National Bank vs. New York, Supreme Court Reporter, Vol. 7, p. 832.

In Lionberger vs. Rouse, *supra*, this court said: "There was nothing to fear from banks of discount and deposit merely, for in no event could they work any displacement of national bank circulation."

We are therefore confined to the consideration of (first *proviso* of the original act) the question whether national bank shares are liable to a greater rate of taxation than other moneyed capital. The claim of preference in this case is confined to the moneyed capital invested in savings banks. We claim that the capital invested in savings banks and in national banks under the law as construed by the Iowa Supreme Court, must be taxed substantially the same. As far as the facts in this case appear, the shares in national banks are taxed in precisely the same amount in the aggregate, and at the same rate as the capital of savings banks under the decision of our Supreme Court.

The paid up capital of savings banks is construed to include the surplus and undivided profits of the bank, and the whole capital as so construed is liable to taxation.

Davenport National Bank vs. Board of Equalization, 64 Iowa, 144.

Inequality between the methods adopted can only be claimed on two grounds: First, the good will of the bank escapes taxation in case of savings banks, and second, savings banks may deduct their government securities.

As far as the matter of good will, this is a very doubtful basis of taxation and a matter of very little value.

The value of the bank share will rarely be found advanced beyond the additional value given to the stock by surplus and undivided profits. There is to offset any value from this source the unknown losses and contingent liabilities of the bank. This element is not taken into consideration in the valuation of national bank shares in this case, and is of too little importance in any event to affect the substantial equality of taxation. We refer to the opinion of our Supreme Court on this case, as correctly stating the law. "If any advantage accrues to savings banks from the mode of assessment which has been provided, it appears to us to be a mere incident of the mode and evincing no desire to favor savings bank capital. The statute provides for taxing savings banks by assessing their "paid up capital." This, in the outset at least, should be equivalent to assessing the shares. Later on it might not be strictly so. The shares might come to have something of value by reason of good will and accumulated business. But we cannot regard that as of sufficient importance to justify us in making the ruling which the appellant contends for. Property employed in trade and manufactures by incorporated persons is not taxed with reference to any such consideration. The taxation of shares in incorporated companies, which may have something of value by reason of good will, is not, we think, regarded as resulting in inequality of taxation, as between shareholders and others owning property similarly employed. Some latitude is allowed in modes of

assessment, even though they should not result in absolute equality of taxation. Besides, appellant's shares were assessed solely with reference to its capital, including its surplus. They were not considered worth more than the amount of appellant's actual assets."

Davenport National Bank vs. Board of Equalization, 64, 143.
Same case, Record, p. 12.

This court has said, "It is not absolute equality that is contemplated by the act of Congress. A rule which rests upon the ground that exact uniformity or equality of taxation cannot, in the nature of things, be expected or attained under any system."

Boyer vs. Boyer, 113 U. S., p. 701.

We contend, moreover, that if good will be considered a practical and material element of value in the national bank share, which element of value is not liable to assessment in the case of savings bank capital, that under the laws of Iowa it cannot be considered in fixing the taxable value of the national bank shares. Good will if a material element of value must be exempted from assessment in both cases if in either.

Section 820, Code of Iowa, provides: "Such (national bank) shares shall not be assessed at a greater rate than is imposed by law upon other moneyed capital." Therefore, if assessing the good will to the national bank share causes it to be taxed at a greater rate than savings bank capital, and in conflict with the laws of the United States, then such assessment would be in conflict with the laws of Iowa, and the element of good will is not entitled to be assessed in the case of either savings bank capital or national bank shares. The aggregate of the shares in a national bank must in amount be its paid up capital, together with its surplus and undivided profits. And should any discrimination be made by the assessing officers in this respect against national bank shares, it would be in violation of the Iowa law, and there being no conflict between the laws of Iowa and of the United States, the national bank would be entitled, not to an absolute exemption from all taxation, but

to a sufficient deduction from its valuation to make good the excessive assessment.

The good will was not considered in arriving at the value of the shares in plaintiff's bank. The result, except as affected by government securities, was precisely the same to the shareholders that it would have been had the capital, including the surplus, been taxed.

But the plaintiff rests his case upon the second point of alleged discrimination, that government securities in which the capital may be invested may be deducted in the assessment of the capital of a bank.

The plaintiff moreover claims that moneyed capital in many forms beside that of government securities is non-taxable. (Brief, pp. 3 and 4.)

We deny, without discussing the matter at length, that any of the forms of moneyed capital are exempt by the laws of Iowa, except government bonds and treasury notes. That national bank notes are non-taxable is neither sustained by the acts of Congress by reason or the weight of authority.

Board of Comrs. vs. Elston, 32 Ind., 27.

This court has never decided that State, County or municipal bonds owned or held in any taxing district are exempt from taxation in such district, whether issued by such taxing district or the municipality, County or State of which it forms a part. This court, in the cases cited, declines to decide this point.

The following cases, and we have been unable to find any to the contrary, hold that State, County or municipal bonds may be taxed by the jurisdiction issuing them the same as other property held in such jurisdiction.

Champaign County Bank vs. Smith, 7 Ohio St., 42.

People vs. Home Insurance Co., 29 Cal. 533.

There is no special exemption of such property from taxation in this State, but all property is made liable to taxation except such as is specially exempted.

Code of Iowa, Section 801.

We admit, however, that in taxing a bank upon its capital, government securities in which its capital is invested may be deducted. But the same deduction must be made in the assessment of the capital of individuals. This deduction in the case of individuals does not exempt the national bank shares from taxation.

People vs. Comrs., 4 Wall., 244.

Why should this deduction in the case of savings bank capital produce a different result?

The plaintiff stands not upon reason but alleged authority and cites us to Van Allen vs. Assessors, 3rd Wall. 573. It is true this case decides that where the New York law provided for the taxing of State banks upon their capital stock, such method of taxing was not equivalent to the taxing of national bank shares because the State bank could deduct its government bonds, and therefore national bank shares were exempted from taxation. But this case was decided under the second clause of the national bank act of 1864, referring to the taxation of shares in State and national banks, which clause has since been repealed. This clause of the national bank act only applied to State banks of issue which came into direct competition with the national banks.

Lionberger vs. Rouse, *supra*.

Therefore this decision under this clause only applies to State banks of issue. It does not apply to the clause of the national bank act referring to the taxation of national bank shares and other moneyed capital in the hands of individuals, because individuals may deduct their government securities; and if it did apply, national bank shares would be wholly non-taxable. This decision does not apply to the taxation of savings bank capital, not only because the clause construed has been repealed, but also because savings banks are not banks of issue. They are "other moneyed capital in the hands of individuals." They are allies and not rivals of national banks.

Now trust companies in the State of New York receive deposits and make loans and generally transact the same business

as our savings banks. The actual capital of these trust companies in New York amounts to $32,000,000. These companies are taxed on their capital stock, and are allowed to deduct from their taxable capital their non-taxable securities including government bonds. The capital of these companies unquestionably constitutes moneyed capital in the hands of individuals. These companies are allowed to make the same deductions that are claimed to exempt national bank shares from taxation in this case. If, contrary to the present national bank act and Van Allen vs. Assessors, *supra*, national bank shares are taxed at a greater rate by the laws of Iowa than savings bank capital, and are therefore exempt from taxation, so in New York national bank shares are taxed at a greater rate than the capital of trust companies, and must therefore, in that State, be exempted from taxation. But this court has held that the method of taxing trust companies above set forth does not operate to tax national bank shares at a greater rate than the capital of trust companies, notwithstanding trust companies may deduct their non-taxable securities.

Mercantile National Bank vs. City of New York, Supreme Court Reporter, Vol. 7, p. 826.

This court held in the case last cited that taxing trust companies on their capital stock to the company and allowing the deduction by the company of its government securities, was equivalent to the taxation of shares in the company, and that national bank shares were not on this account exempted from taxation.

Mercantile National Bank vs. City of New York, *supra*.

The assessment of the national bank shares in the aggregate in this case was made by taking 35 per cent of the paid up capital and surplus (the basis of valuation being 35 per cent of the cash value) and deducting the assessed value of the real estate. The sum thus obtained was the aggregate value of the shares. Is there any substantial difference between this method of valuation and that of the savings banks, wherein the aggregate value of the capital to be taxed is reached in the same way?

The only difference is that the savings bank is entitled to a deduction of the amount of its capital invested in government securities. That this deduction does not disturb the substantial equality of taxation and is not fatal to the taxation of national bank shares has been decided in Mercantile National Bank vs. City of New York, *supra*.

HAS A MATERIAL PORTION OF MONEYED CAPITAL BEEN EXEMPTED FROM TAXATION?

Even if instead of there being no exemption of savings bank capital and no favor shown it under the taxing laws of this State, all the capital stock of savings banks was totally exempted from taxation, plaintiff would have no ground for relief. It has failed to show that any considerable amount of the moneyed capital of this State was invested in savings banks. There is only shown to be $350,000 of capital invested in savings banks. Plaintiff's petition shows that there were $4,500,000 in amount of moneyed capital in the form of deposits alone in the City of Davenport.

This last amount is unquestionably subject to taxation and taxed the same as shares in national banks. How much moneyed capital there may be in the form of loans and in the possession of firms and individuals, does not appear, but the amount must be very large. There is no complaint about moneyed capital in any other form but that of savings banks.

In order to exempt national bank shares from taxation there must be exempted from taxation a very material part of the moneyed capital in the hands of individual citizens within the same jurisdiction or taxing district.

Boyer vs. Boyer, 113 U. S., p. 689.

In this case on demurrer to the bill which alleged there were corporations created by the laws of Pennsylvania whose capital stock was assessed at $564,000,000, upon which no tax was leviable for county or local purposes. There were $74,000,000

in amount of money due from solvent debtors exempt, some from all taxation and all from County and local taxation. There were municipal loans to the amount of $51,000,000 exempt from County and local taxation. The paid up capital of all the national banks amounted to only $57,000,000.

It was held upon this showing that there appeared to be a substantial inequality in the method of taxing national banks compared with other moneyed capital.

Is there any comparison between the cases and the showing made in each? Now in this last cited case it is held that there may be a partial exemption of moneyed capital in the hands of individual citizens.

Boyer vs. Boyer, *supra.*
National Newark Banking Co. vs. Newark, Vol. 7, Supreme Conrt Reporter, 839.

The case of Hepburn vs. Supervisors, 23 Wall., 480, is in point. The question was whether national bank shares were exempted from taxation by reason of a statutory exemption for all except State purposes of mortgages, judgments, recognizances and money due upon articles of agreement for the sale of real estate, except mortgages, judgments and articles of agreement given by corporations. The value of such securities did not appear in the case. This court decided that the exemption was a partial exemption only, and that it did not invalidate the taxation of national bank shares, and said "it could not have been the intention of Congress to exempt bank shares because some moneyed capital was exempt."

Further, this court held in the case of a city which exempted city ~~banks~~ bonds from taxation for city purposes, (a large amount of which was held by individuals in the city) that national bank shares were not therefore exempted, and said, "the act of Congress was not intended to curtail the State power on the subject of taxation. It simply required that capital invested in national banks should not be taxed at greater rates than like property similarly invested. It was not intended to cut off the

power to exempt particular kinds of property if the legislature chose to do so."

Adams vs. Mayor, 95 U. S., 19.

Even if the shares in savings banks are exempt, the capital, which the shares represent, is taxed. If the State of Pennsylvania can exempt all mortgages and judgments and recognizances held by individuals from taxation without conflicting with Section 5219, cannot Iowa exempt savings bank shares when it taxes the capital? Is not the same purpose sought in both, to avoid taxing the same property twice? Is there anything in the legislation of Congress to prevent this? Is there any such showing as in Boyer vs. Boyer, of the amount of moneyed capital exempted. Is there any such showing as in National Banking Co. vs. Newark, *supra*, where this court held the exemption immaterial? Is it not true in any light in which the question at issue may be viewed, that there is no evidence of any substantial exemption of moneyed capital?

We deny that there has been any favor shown to savings banks under our methods of taxation. If there has been it will take the miscroscopic talents of counsel for plaintiff to discover it. If there has been such favor, it has been favor shown to a very meritorious purpose.

Savings banks, if properly organized and guarded by law, furnish a safe and convenient place of deposit for small sums of money; a place of deposit where such sums may draw interest and accumulate. They are an encouragement to industry and thrift. On account of the beneficial purpose accomplished by savings banks, they have so far been regarded with favor by this court.

In the State of New York there are over $500,000,000 of money deposited in savings banks, every dollar of which, on account of such deposit, is exempt from taxation, and every dollar of which is moneyed capital. This court held that such exemption did not exempt national bank shares. It said, "it cannot be denied that these deposits constitute moneyed capital

in the hands of individuals within the terms of any definition which can be given to that phrase (moneyed capital), but we are equally clear they are not within the meaning of the act of Congress in such a sense as to require that if they are exempted from taxation, shares of stock in national banks must thereby be also exempted from taxation. No one can suppose for a moment that savings banks come into any possible competition with national banks of the United States. They are what their name indicates, banks of deposit for the accumulation of small funds belonging to the industrious and thrifty. To promote their growth is the obvious interest and manifest policy of the State. Their multiplication cannot in any way injuriously affect any ligitimate enterprise in the community. We have already seen that by the previous decisions of this court it has been declared that "it could not have been the intention of Congress to exempt bank shares from taxation because some moneyed capital was exempt, (Hepburn vs. Supervisors, 23 Wall., 480), and that the act of Congress was not intended to curtail the State power on the subject of taxation. It simply required that capital invested in savings banks should not be taxed at a greater rate than like property similarly invested. It was not intended to cut off the power to exempt particular kinds of property if the legislature chose to do so. The only limitation upon deliberate reflection we now think it necessary to add is that these exemptions should be founded upon just reason and not operate as an unfriendly discrimination against national banks."

Mercantile National Bank vs. City of New York, *supra*.

We submit that the exemption of $500,000,000 of deposits from taxation is a far greater exemption of moneyed capital than the exemption of both the capital and the shares of all the savings banks in Iowa.

We agree with plaintiff that deposits are the most essential elements of a bank's success, and that no greater preference could be shown savings banks than to exempt all their deposits

absolutely from taxation. As the greater includes the less, so we think if the exemption of the $500,000,000 of deposits in New York savings banks does not operate to tax New York national banks at a greater rate than other moneyed capital, the Iowa method of taxing savings banks, which taxes the capital at its full value if not the shares, does not do so. The moneyed capital which does compete with national banks incorporated State banks is taxed at a much greater rate than national bank capital.

Henkle vs. Town of Keota, *supra.*

SAVINGS BANKS NOT RIVALS OF NATIONAL BANKS.

Savings banks in Iowa are not in any sense formidable rivals of the national banks, as plaintiff in error would have this court believe. In no way do they come in competition with national banks. To the contrary they are welcome auxiliaries to national banks, and with scarcely an exception, the office of the savings bank is found in the same building with, if not in the room occupied by a national bank.

The savings bank keeps on deposit with such national bank, a snug little sum which it must of necessity have in reserve to meet demands of its depositors.

Deposits in savings banks are largely made by the industrial classes, and in small amounts. The merchant or business man who may have use for his funds at any time, does not deposit in savings banks, which by law may require sixty days written notice of the withdrawal of any deposits. (Section 7, chapter 60, Laws of 1874, (Miller's Code, p. 436. It may be safely asserted that over 60 per cent of the depositors in savings banks have less than one huudred dollars each to their credit. These depositors deposit for the sake of interest, and would not deposit in national banks which pay no interest. The strict rules made necessary by the large number of small depositors, in the withdrawal of money, prevent the deposit in savings banks of money required in active business. The money deposited in

savings banks is left there for its accumulation, and if not so deposited would be invested in property or loaned at interest. No national banks will allow accounts to be opened such as make the bulk of savings bank deposits. The national bank, when operated in connection with a savings bank, secures the deposit of the unloaned funds of the savings bank. The stockholders in the national bank obtain a direct benefit from their organization and are instrumental in organizing them as valuable auxiliaries to national banks. In this city, and we believe in this State, the majority of the officers of the national banks are also officers of savings banks. If their interests conflicted there would not be this close union between the two classes of banks.

While a national bank is a bank of issue, and may receive deposits to an unlimited amount, without regard to the amount of its capital, and may issue bills of exchange, the savings bank can receive on deposit not exceeding one hundred thousand dollars for every ten thousand dollars of paid up capital, (Sec. 7, *supra*,) and can invest the funds or capital in commercial paper, notes, bills of exchange, etc., but can not issue bills of exchange. Sec. 9, chapter 60, Laws of 1874. (Miller's Code, p. 436.) Savings banks are simply and purely banks of discount and deposit.

If the right to invest funds in notes, commercial paper, etc., makes the savings bank a formidable rival of the national banks, then every individual who holds the promissory note or commercial paper of another would be an equally formidable rival, and the bank might ask to be relieved from payment of taxes if the individual were taxed in any way different from such bank.

FOURTEENTH AMENDMENT.

The plaintiff claims that this tax upon the national bank is invalid under the Fourteenth Amendment to the constitution, and says: "We feel confident that relief will be granted to the bank under Section 5219, and therefore it need not be sought

under the Fourteenth Amendment." We feel equally confident that the relief sought will be denied both under Section 5219 and the Fourteenth Amendment, and that argument upon the latter is unnecessary.

CONCLUSION.

Without any discrimination against it whatever, the plaintiff is endeavoring on imaginary grounds to invoke the jurisdiction of this court, and to avoid the payment of a fair and just tax.

To grant the relief sought this court must add to its accustomed jurisdiction the determination of abstract questions of law. It must, contrary to the principles of construction established by this court, and contrary to the decisions of the Iowa Supreme Court, give a forced and unwarranted construction to the savings bank statute. It must overrule all its own decisions declaring that a portion of moneyed capital may be exempt from taxation and national bank shares still be taxed. Instead of requiring a very material exemption of moneyed capital, to create such exemption, the most insignificant exemption must be declared sufficient. This court must further hold that savings banks, instead of being the colleagues and co-workers of national banks are most dangerous rivals and competitors. It must change the whole current of its decisions, which have been to interfere as little as possible with the taxing power of the States consistent with the protection of national bank shares from unequal taxation.

This court has never yet found an instance of intentionally hostile legislation against national bank shares ; it cannot find it in this case. The discrimination, in this State, is in favor of and not against national bank shares. All State banks, except savings banks, are taxable both upon their shares and property, while national bank shares alone are subject to taxation.

We believe this court will follow the precedents heretofore made, and that it will find in the matters at issue here that

neither in the legislation of Iowa nor in the action of the Board of Equalization has there been any violation of the principle of substantial equality in taxation.

L. M. FISHER,
C. A. FICKE,
E. E. COOK,
Attorneys for Defendants in Error.

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Office Supreme Court U. S.
FILED
OCT 23 1884
JAMES H. McKENNEY
CLERK

SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, 1884.

NO. 897.

THE DAVENPORT NATIONAL BANK, PLAINTIFF IN ERROR,

vs.

THE BOARD OF EQUALIZATION, ET AL.

ERROR TO SUPREME COURT OF IOWA.

COUNTER AFFIDAVIT AND BRIEF BY PLAINTIFF, TO THE MOTION TO DISMISS FILED BY DEFENDANTS, IN ERROR.

I.

As to the payment of the taxes.

The case was decided in the State Supreme Court on June 11, 1884 (Tr. 14), and the taxes were paid on June 16 and June 19, 1884, *but the payment was made without prejudice* to the right of the Bank to

prosecute its writ of error, as will be seen from the following affidavit (the original of which is on file with the Clerk), viz:

SUPREME COURT OF THE UNITED STATES,

October Term, 1884.

No. 897.

The Davenport National Bank, Plaintiff in Error, *vs.* The Board of Equalization et al. } *Counter Affidavit on Motion to Dismiss.*

Writ of Error to Supreme Court of Iowa.

AFFIDAVIT OF A. J. HIRSCHL.

UNITED STATES OF AMERICA, SOUTHERN DISTRICT OF IOWA, COUNTY OF SCOTT, IN STATE OF IOWA, } ss.

I, A. J. Hirschl, being first duly sworn, depose and say that I am now — and for the last four years have been — attorney of the Davenport National Bank, and have been and am its attorney and one of its counsel in the above entitled cause, and do state that I myself made payment of the taxes for the year 1883 for said Bank, and did so in the manner following, viz: On June 16, 1884, I paid to A. R. Dixon, City Collector, $1,238.14, but before paying I told him I would pay only on condition that it be received without prejudice to the litigation then pending. Mr. Dixon asked time to consult with the City Attorney, and on his advice received said sum of $1,238.14, and gave me a receipt stating that the amount was for the assessment for 1883 against said Bank (except for shares of Samuel Hirschl, Pauline Meyer, and A. S. Tiffany), and stating, further, "The receipt of above amount is not to "prejudice the suit of said Bank against the city of Davenport in any "form or manner."

On June 19, 1884, I paid him $50.93, for tax for 1883, on shares of said Samuel Hirschl, Pauline Meyer, and A. S. Tiffany, and in his receipt therefor he stated: "This receipt is issued without prejudice to "either party in pending suit between Davenport National Bank and "city of Davenport."

On June 16, 1884, I paid to Deputy County Treasurer R. Rohlfs the sum of $1,790.10, tax for 1883 on personal property assessed against

said Bank (except shares of Samuel Hirschl, Pauline Meyer, and A. S. Tiffany).

On June 19, 1884, I offered to pay said county tax for 1883 on said shares of said Samuel Hirschl, Pauline Meyer, and A. S. Tiffany, but stated that I would do so only if it be received without prejudice. At that date the said Deputy Treasurer had charge of the office, and the Treasurer, M. J. Rohlfs, was in Europe. Said Deputy said he would take the advice of the County Attorney, and said Deputy took such advice and then accepted said county tax for 1883 on said shares, being $88.95, and gave me a receipt in which he stated: "This receipt is "issued without prejudice of either party in the pending suit."

I do further state that I have in my possession all the above mentioned receipts (being four in number), and am ready to exhibit the same to opposing counsel on request, and also to file the same with the Clerk of this Court if their inspection is desired by the Court.

A. J. HIRSCHL.

Sworn and subscribed to before me by the said A. J. Hirschl, this 15th day of October, 1884.

WILLIAM K. WHITE,
Commissioner of the U. S. Circuit Court,
Southern District of Iowa.

The cases cited by defendants in error are not analogous to the one at bar; and even if they were, they would not control this Court, which has decided that it has jurisdiction of a cause, even if the judgment of the court below has been paid. In *Erwin* vs. *Lowry*, 7 How., 184, it is stated: "In no instance within our knowledge has an appeal or writ of "error been dismissed on the assumption that a release of errors was "implied, from the fact that money or property had changed hands by "force of the judgment or decree. If the judgment is reversed, it is the "duty of the court to restore the parties to their rights."

In the case of *O'Hara* vs. *MacConnell*, 93 U. S., 154, the Court follows this *Erwin* case, and says of it: "That was a case where the appel- "lant received the money which, by decree, he recovered of the appellee, "and is, therefore, a stronger case than the present, as his action would "seem to ratify the decree."

And so that case was also a stronger one than the case at bar, in which it is seen the plaintiff in error has objected to the tax at every stage, and

then paid it under reservation of its rights. The case at bar is not in the least like some of those cited by defendants' counsel, in which the appellants were deemed to have waived their appeal, because they accepted the benefits of the judgment below. The plaintiff in error has accepted no benefits; it has simply paid what was forced upon it to pay, and what could have been demanded by distraint or execution; and in the act of payment, insisted that the judgment was wrong, and reserved, and had conceded to it, the right to obtain a decision in this Court, with restitution in case of reversal.

II.

As to the jurisdiction of this Court.

Defendant's counsel make here, essentially the same argument that they made in the State Supreme Court, and the answer to them can be made, and is now made, in this Court in the same words in which it was made in that Court:

"It would appear that a board of equalization has power to determine "not only questions of fact, but also questions of law; see

"*Smith* vs. *Osburn*, 53 Iowa, 475.

"'Where a tax is imposed under an *unconstitutional* law, or levied "'without authority of law upon property exempt from taxation, the "'same cases hold that the jurisdiction of the board of equalization is "'not exclusive' (which is the same as saying that there is a remedy be- "fore the board, though it be not exclusive). See also

"*Barber* vs. *Farr*, 54 Iowa, 59.

"In the case of *The German-American Savings Bank* vs. *The City of* "*Burlington*, 54 Iowa, 609, several important questions of law were "raised before the board, to-wit: The right of a city to tax government "bonds. The points were taken on appeal to the Circuit Court, and then "to this Court. Boards of equalization are constantly passing upon ques- "tions of law, *e. g.* whether certain property, held under certain contracts, "belongs to one man or another.

"The case cited by counsel, *Dist., etc.*, vs. *Moore*, 39 Iowa, 606, is "only to the effect that a board cannot be called upon to pass upon its own "powers, or upon the powers of the taxing body for which it acts. No- "body would expect such a body to commit *hari-kari*. It would certainly "be strange for the board in Davenport township to decide that said town- "ship is not at all invested with taxing powers; but it is quite another "matter if such a board decides that certain specific items should or

"should not be placed on the tax-list; this it may do, though a question "of law, and even a *constitutional* question, be involved. See

"*Smith* vs. *Osburn, supra.*

"But, conceding, for the sake of argument, that the board of equali- "zation was without jurisdiction, what follows? Why, simply that all "proceedings were void — the paper filed, etc., mere blanks.

"Very well!

"The *Circuit* Court, however, had jurisdiction of the *subject-matter;* and "as appellees appeared there **without objection,** and filed their answer, "and on the hearing conceded certain facts to exist, it follows that the "cause was as fully and properly tried as if it had been there originally "instituted. See

"*Groves* vs. *Richmond,* 56 Iowa, 69.
"*Finch* vs. *Hollinger,* 47 Iowa, 173.

"Had defendants objected in the Circuit Court, as they now do, petitioner "would simply have erased the heading of the petition, given it the usual "caption, and entitled it a 'Bill in Equity.' If there was no jurisdiction "before the board, then so much of the petition as refers to the board "must be disregarded as being surplusage. If this be done, a very com- "plete bill in equity for the cancellation of an illegal tax will be found "to remain. It should be observed that *neither the county nor the city* "were parties before the board. They were served with notice and "came — for the first time — into the Circuit Court. They made no ob- "jections to the forms. They virtually submitted the case on an *agreed* "*statement,* by conceding all the material facts (Abst. 10–11). The "Circuit Court had jurisdiction of them and of the subject-matter, and "full power to decide — and did decide — the case on its merits.

"Let us take counsels' own smart illustration. Suppose a petition for "divorce be filed before a Justice of the Peace; defendant does *not* ap- "pear; the Justice dismisses the case; the plaintiff appeals to the Circuit "Court, and *files and dockets* in said court the *original* petition; the de- "fendant then appears, and *making no objections,* files his answer on the "*merits;* the case is heard at great length on the merits, and decided. "An appeal is taken, and then in this Court it is for the first time sug- "gested that the action of the Circuit Court was without jurisdiction, "because the petition laying there had upon it a caption entitling it in "the Justice's Court, instead of the usual Circuit Court caption. Would "this not be a ridiculous idea? It does seem that the learned counsel "must feel sorely pressed on the merits to raise this point. They are "surely attempting to escape through a very diminutive aperture, and it

"is to be hoped that this dignified Court will not so belittle itself as to "crawl through after them."*

The foregoing language shows that the question of jurisdiction was fully argued in the State Supreme Court, and the opinion (Transcript 11) shows that the Court decided the case on its merits. It is, therefore, seen that the Court *must* have come to the conclusion that it had jurisdiction; otherwise, it would not have decided the case on its merits. It is not necessary for the Court to declare affirmatively that it has jurisdiction. The entertaining of the cause at all is an affirmation of jurisdiction — *especially* where the Court has been urged to dismiss the cause for want of jurisdiction.

Well, then, if that Court had jurisdiction, this Court has jurisdiction, and for two reasons:

First — Because the question of jurisdiction necessarily depended upon the construction of the State statutes under which the Boards of Equalization are organized; and as the State Court has construed those statutes, and has entertained jurisdiction in this cause coming up from them, it follows that such decision is binding upon this Court. The correctness of the following elementary principles will not be disputed:

A State may organize such tribunals as it may see fit.

It can entrust them with such powers as it deem best.

All questions as to the extent of their powers are determinable from the laws under which they act.

The State Courts are the ultimate judges of the meaning of State statutes.

The Federal Courts will follow the State Courts in their construction of State statutes.

The conclusion is now inevitable that the State Supreme Court has construed the State statutes to mean that the questions involved in the case at bar are properly raised in the first instance before the Board of Equalization, and that, in the light of such construction of those statutes, this Court should not usurp the functions of the State Supreme Court, and, by dismissing the case, declare that that Court did not have jurisdiction.

Secondly — The jurisdiction of *this* Court depends upon the federal law, and not on the State laws. If the requirements of the federal law

*The correctness of this quotation will not be disputed; if it should be, we will ask that the arguments themselves be certified to this Court.

exist, then there is jurisdiction; otherwise, not. Now, what are these requirements. Under section 709, Revised Statutes, they are as follows:

(*a*) A final judgment in any suit in the highest Court of a State.

(*b*) Some "title, right, privilege, or immunity" must be claimed under the federal constitution or statutes.

(*c*) The decision must be against such title, right, privilege, or immunity.

We insist, confidently, that all these requirements are fully met with in the case at bar, and if they are, then this Court must have jurisdiction. Let us examine closely.

(*a*) The judgment was final, and in the highest Court — no doubt about that. It was also a judgment in a "suit."

Of the word "suit," it is said: "The term is certainly a very com-"prehensive one, and is understood to apply to any proceeding in a "court of justice by which an individual pursues that remedy in a court "of justice which the law affords him. The modes of proceeding may "be various, but if a right is litigated between the parties in a court of "justice, the proceeding by which the decision of the court is sought is a "suit."

Holmes vs. *Jennison*, 14 Peter, 566.

In the light of the foregoing, a condemnation proceeding to take land has been held to be a "suit."

Kohl vs. *United States*, 91 U. S., 375.

In the case of *People* vs. *Weaver*, 100 U. S., 539, it will be seen that the proceedings commenced by the appearance of the parties before the Board of Assessors, and continued to the highest State Court, and then on error to this Court.

In the case at bar, plaintiff in error deemed that the tax being levied on its *shares* made a higher result than if it were levied upon its *capital*, and considering that such tax was not *void*, but only *voidable*, it appeared before the Board of Equalization and asked to have the lighter tax imposed in place of the heavier, thus to *equalize* its assessment with those of the State banks.

It should be remembered, that even where the State law prescribes a tax for the national banks more onerous than the one imposed on other

moneyed capital, such tax on the national bank is not void, and, so long as it is paid without resistance, it is a valid and final payment, and there need be no apprehension of bankrupting counties by suits to recover the amounts for many years back as having been illegally exacted. But the bank (or shareholder) may, by appearing before a Board of Equalization, show that the tax upon it is heavier than it should be, and may claim to have extended to it the same privileges enjoyed by its rivals.

That the tax is not void, but only voidable, see

Supervisors vs. *Stanley*, 105 U. S., 315.

Applying the principles of that case to the one at bar, it must be said that the assessor was not without authority to tax national bank shares, but that the shareholder (if he deemed that the assessment was coming more heavily upon him than what his proportionate part would be if the tax were on the capital) could ask before the Board of Equalization that his bank be treated as favorably as the others, and that the tax be removed from his share, and be levied on the capital (so far, of course, as it did not consist of government bonds and other non-taxables).

The Supreme Court of Iowa has decided that where the complaint is of such a nature that it can properly be brought before the Board of Equalization, that then it can *not* be brought in a court of equity. See

Macklot vs. *City of Davenport*, 17 Iowa, 379.

Now, the complaint of the Bank in the case at bar was of such a nature; the tax on its shares was valid, the statutes were valid, so long as the Bank made no complaint; but, although the statutes were valid, yet "the law of Congress is paramount," and under it, all benefits allowed to State banks may be claimed by the national banks. "The law of the "State is not entirely superseded, but to this extent must be regarded as "modified by the act of Congress." See

Loftin vs. *Citizens National Bank*, 85 Ind., 341.

It would seem, then, that the national bank cannot assail the tax by injunction (which is the usual remedy for an invalid or void tax), but must seek relief before the Board of Equalization, by showing that its tax is *unequal* to that on the others; and if relief is refused by the Board, then follow the case, *as provided by statute*, by appeal to the Circuit Court.

Consequently, the complaint before the Board of Equalization was the proper (*and perhaps the only*) course, and such complaint, with its

subsequent *statutory appeal* to the Circuit Court, must certainly be regarded as a "suit," because, indeed, it was a proceeding in a "Court of Justice" (i. e., the Circuit Court), by which an individual pursued that remedy "which the law affords him."

(*b*) A "title, right, privilege, or immunity" is claimed under a federal statute and the federal constitution. (Transcript page 4). It is claimed that the tax in question was assessed "at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens," and that complainant was denied "the equal protection of the law."

(*c*) The decision was against such title, right, privilege, or immunity. The Court decides (Transcript 12) that the aforesaid clauses in the federal statute and constitution do *not* confer upon the national bank shareholder the right, privilege, or immunity of claiming for himself the same easy taxation that is imposed on the State bank shareholder; and this is plainly seen from the language of the decision: "As to whether "savings banks shares are taxable, we do not determine; we have "reached the conclusion that even if they are not, the taxation of "national bank shares is not, within the meaning of the statute, at a "greater rate than is assessed upon other moneyed capital."

In the case of the *German American Savings Bank* vs. *City of Burlington*, 54 Iowa, 609, the bank *appeared before the Board of Equalization*, and relying on a *federal* law, asked that its government bonds be deducted from the taxable capital. The Board overruled the application; the bank *appealed* to the State Circuit Court, which reversed the Board, cancelled the tax complained of, and *enjoined* its collection. Then the city appealed to the State Supreme Court, which affirmed the decision of the Circuit Court. Suppose the State Supreme Court had denied the claims of the bank; suppose it had asserted that government bonds were taxable, that the federal statute did not mean to exempt them, or if it did, that it was itself unconstitutional. Clearly, such a case could properly have been reviewed in this Court on error; otherwise, the bank would be without remedy, and this Court would be abdicating its prerogatives, and allowing the State Court to act as the final arbiter of the federal laws.

If this Court dismisses this case for want of jurisdiction, it is an assertion that the *State* Court is to be considered as the *final* arbiter of meaning, construction, and enforcement *of the federal* laws and constitution.

A dismissal of this case will be an absolute denial of justice; it will place the plaintiff in error under the absolute control of the State Courts upon the questions of privileges under *federal* laws.

This can readily be seen.

Suppose this plaintiff should, as opposing counsel suggest, attack this tax by a bill in equity and injunction, or suppose it should (under the statute which allows the recovery of taxes illegally exacted) bring its action to recover taxes for five years back, would not the State Court decide that the action was improperly brought, and that the Bank's only course would have been to apply to a Board of Equalization? Has not the State Supreme Court actually so decided, in the case at bar? Has it not entertained and maintained jurisdiction, despite the gentlemen's arguments to the contrary? Is this not a ruling peculiarly upon the meaning of State Laws, and upon the extent of powers entrusted to these State tribunals, viz: the Boards of Equalization?

We think all these queries must be answered in the affirmative.

Very well; then it follows that if an injunction had been asked, and refused on the ground that the State had organized another tribunal for the entertaining of such complaints, such ruling, being based entirely on State statutes, would *not* have been subject to review in this Court.

Now, furthermore, that we have adopted the other method, and appeared before the Board of Equalization, and have taken the appeals provided by law, and the Supreme Court has decided the case *solely and entirely* on its construction of the federal law, denying that it is to be construed as we insist it should be, if, now, there is no right of review in this Court, the inevitable result must be that the *State* Supreme Court has become the final arbiter of the *federal* law, and can construe or misconstrue, accept or reject, obey or disobey the same at pleasure.

Counsel's apprehension that this Court will be turned into a mere assessing tribunal, are certainly ill founded. Even in the case at bar, this Court is not, and cannot be, asked to assess or fix *values;* in cases like the one at bar no question of value can be taken for review from a State Supreme Court to this Court, because it would not be a "federal" question. And, in the other line of litigation, if a citizen of Illinois finds that his property in Iowa is being taxed higher than it should be, he *must* apply in the first instance to a Board of Equalization; if this denies him justice, he appeals to the State Circuit Court, and why should

he not then be allowed to remove the case to the Federal Court? Certainly if a non-resident ever has a right to have his complaint heard in a Federal Court, it should be in a case where he is seeking relief against the acts of assessors and equalizers, in fact, of an entire community.

Of course, such removal to the Federal Court would only be where $500 are in controversy.

We have filed a motion for advancing the case on the docket, and have made due service of the same, and beg to submit said motion at the same time that the motion for dismissal is submitted by defendants in error.

The foregoing discussion may seem rather lengthy, but we trust that a sufficient excuse may be found in the importance of the topic.

We respectfully submit that this Court should decide the cause on its merits, and not dismiss the Writ of Error.

A. J. HIRSCHL,
W. F. DITTOE,
Counsel for Plaintiff in Error.

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1884.

No. 897.

THE DAVENPORT NATIONAL BANK *Plaintiff in Error*, vs. THE BOARD OF EQUALIZATION, *et al.*	ERROR TO SUPREME COURT OF IOWA.

MOTION BY DEFENDANT TO DISMISS WRIT OF ERROR.

The defendant in error in the above-entitled cause, moves the court that the Writ of Error in this cause be dismissed, for the following reasons :—

I.

The only question at issue in this cause, is, as to the liability of plaintiff in error to pay certain taxes assessed under the laws of the State of Iowa—and the affidavits filed show that all of said taxes have been paid in full.

II.

This court has no jurisdiction to hear and determine any question raised by the Record in this proceeding.

It is an attempt to turn this court into an *assessing tribunal*, or Board of Equalization, for State purposes.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1884.

No. 897.

THE DAVENPORT NATIONAL BANK,
Plaintiff in Error,
vs.
THE BOARD OF EQUALIZATION,
et al.

WRIT OF ERROR TO SUPREME COURT OF IOWA.

Affidavit of M. J. Rohlfs, County Treasurer.

UNITED STATES OF AMERICA,
STATE OF IOWA, COUNTY OF SCOTT, CITY OF DAVENPORT. } ss.

I, M. J. Rohlfs, being first duly sworn, depose and say, that I am and for several years last past have been the treasurer of the County of Scott, in the State of Iowa. That the above named Davenport National Bank, the plaintiff in error in this cause, has paid in full all its taxes on its shares of capital stock assessed by or under the laws of the State of Iowa, for the year 1883, and that all the taxes—state, county, school or others—over which the said Board of Equalization, appellees, etc., have any control or jurisdiction for said year 1883, and assessed on said shares of stock, have been paid in full either by said bank, or by the individual stockholders. That the last of such taxes were paid on the 19th day of June, 1884.

That neither the said bank nor any of the holders of shares of said stock owe or have unpaid any of the taxes mentioned or referred to in the record in this cause.

M. J. ROHLFS.

Subscribed and sworn to by said M. J. Rohlfs before me this 3d day of October, 1884. WILLIAM K. WHITE,
Commissioner of the U. S. Circuit Court,
Southern District of Iowa.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1884.

No. 897.

THE DAVENPORT NATIONAL BANK,
Plaintiff in Error,
vs.
THE BOARD OF EQUALIZATION,
et al.

WRIT OF ERROR TO SUPREME COURT OF IOWA.

Affidavit of A. R. Dixon, City Collector.

UNITED STATES OF AMERICA,
STATE OF IOWA, COUNTY OF SCOTT, CITY OF DAVENPORT. } ss.

I, A. R. Dixon, being first duly sworn on oath, do say, that I am the collector for the City of Davenport, in the County of Scott and State of Iowa, and as such am the custodian of the collection records of said city; that said records show, and I know of my own personal knowledge that the above-named Davenport National Bank, the plaintiff in error in this cause, has paid in full all its taxes on its shares of capital stock, assessed by or under the laws of the State of Iowa, by the City of Davenport, for the year 1883, and that all the taxes over which the City of Davenport and the Board of Equalization of the City of Davenport, appellees, etc., have any control or jurisdiction for said year 1883, and assessed on such shares of stock, have been paid in full either by said, bank or by the individual stockholders; that the last of such taxes were paid on the 19th day of June, 1884.

That neither the said bank nor any of the holders of shares of stock owe or have unpaid, any of the taxes mentioned or referred to in the record of this cause.

A. R. DIXON, City Collector.

Sworn and subscribed to before me by the said A. R. Dixon, this 6th day of October, 1884. WILLIAM K. WHITE,
Commissioner of the U. S. Circuit Court,
Southern District of Iowa.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1884.

No. 897.

THE DAVENPORT NATIONAL BANK, *Plaintiff in Error*, vs. THE BOARD OF EQUALIZATION, *et al.* } ERROR TO SUPREME COURT OF IOWA.

BRIEF FOR DEFENDANT IN ERROR, ON MOTION TO DISMISS WRIT OF ERROR.

I.

As to all taxes at issue having been paid :

The said bank appeared before the Township Board of Equalization, and asked to have the assessment on its shares of stock for the year 1883 stricken from the assessment books. This was refused, and the bank appealed to the Circuit Court, as is provided by section 831, of the Code of Iowa.

Since such appeal all of said taxes have been paid.

Should the county, after such payment, be compelled to go on and bear the burdens of expensive litigation, to settle a mere question where no real interests are at issue? The contrary has always been held in this State.

Wilson & Co. vs. Russell, 40 Iowa, 697.
Bergalthous vs. Ins. Co., 36 Iowa, 250.
M. & M. R. R. Co. vs. Byington, 14 Iowa, 572.
Elwood & Lowry vs. Wilson, 21 Iowa, 523, 528.

II.

This court has no jurisdiction of this proceeding.

This appeal is an attempt to turn this court into an *assessing tribunal*, or board of equalization, for state purposes.

Section 829 of the Code of Iowa, is as follows :—

"SECTION 829.—The township trustees shall constitute a Board "of Equalization for their respective townships, and have power "to equalize the assessments of all tax-payers within the same, "except in such cities and incorporated towns as elect a town- "ship assessor, in which case the city council shall be the Board "of Equalization, and shall perform such duties in substantially "the same manner as is required of a township board of equali- "zation, by increasing or diminishing the valuation of any piece "of property, or the entire assessment of any tax-payer, as they "may deem just and necessary for an equitable distribution of "the burden of taxation upon all the property of the township, "*provided:* that such boards shall keep a record of their pro- "ceedings."

SEC. 831.—Provides that :

"Appeals may be taken from all boards of equalization to the "circuit court of the county where the assessment is made, with- "in sixty days after the adjustment of such boards of equaliza- "tion, but not afterward.

This Board of Equalization is a mere assessing board, and on appeal the courts are made assessing boards to make and fix a final assessment of the property in question. There is no "final judgment or decree," nor is there "any suit" comtemplated by section 25, of the judiciary act.

In the case of Davis vs. The City of Clinton, 55 Iowa, 549, this statute was considered by the Supreme Court of our State, and the followig is said by the court (p. 551).

"The hearing before the board cannot be said to be the trial of "an action at law. No issue is joined, nor can it be said there "are parties to the proceeding who can be regarded as adversa- "ries.—*Appeal of the Des Moines Water Co.*, 48 *Iowa*, 324.

" The board, in our opinion, are simply assessing officers, "whose duty it is to do what the assessor, it is alleged, failed to

"do; that is, make an assessment which is just and equitable. "The board constitutes a part of the machinery provided by the "state for the purpose of adjusting the burdens of taxation upon "an equitable basis. * * * * *
"The duty of the circuit court on appeal was to do that which it "was claimed the board failed to do, *make a just and equitable* "*assessment.* From the decision of the Circuit Court, an appeal has "been taken to this court, and we are called upon to do what the "appellant insists the Circuit Court did not do, that is, make a "just and equitable assessment.

"The Circuit Court, and this court, are a part of the machin- "ery provided by the state to aid in proper adjusting the burdens "of taxation. Said courts are assessing officers or tribunals "vested with the same powers, under like conditions and in "special cases, as the board of equalization, except that the "courts may review the action of the board, and conclude the "adjustment made by it was not equitable, and *make another* "*assessment;* or, rather, fix a different value on the property, "which must be respected in levying taxes."

Now, if this court can entertain this writ of error, then it must, in any such case, do the same, and will be called upon to *re-assess* property the same as the state courts. And where non-residents own property situate in the state of Iowa, such appeals may be removed to the United States Circuit Courts, and come to this court on appeal, or writ of error.

This court may thus be called upon to decide whether a particular assessment is just and equitable, in view of all other assessments made in the township; must have before it the entire assessment of the township, and decide in view of all the facts, whether a tax-payer is to be assessed for $20,000, or only for $15,000.

If this court is to follow the decision of our Supreme Court as to the construction of our own statute, then it must organize itself into an assessing board for the purpose of equalizing the

assessments made under the laws of Iowa, for state purposes, or this wrjt of error must be dismissed.

Our statute neither requires, nor does it contemplate that *pleadings* shall be filed by the tax-payer before the board of equalization, or on the appeal; but only that the board shall keep a record of its proceedings. Plaintiff in error has *improvised* parties, and a "title" to this proceeding, but our Supreme Court says there *are* no parties, and of course there is no suit *entitled to a "title."*

We claim that the question sought to be raised by the said petition, filed with the Board of Equalization, and upon which this appeal is based, can only be raised by a bill in equity to restrain the collection of the tax. The petition attacks the whole tax as unauthorized for certain legal reasons. It does not ask to have the assessment equalized, but, in effect, asks to restrain the collection of any taxes on the assessment by striking the entire assessment from the rolls. Our Supreme Court has held that the board is not organized for that purpose.

Dist. Tp. of Taylor vs. Moore, 39 Iowa, 606.
Keck vs. Keokuk Co., 37 Iowa, 547.

If the board had granted the prayer of the petition, and had stricken the entire assessment from the books, according to the decision of the Supreme Court, the taxing power could not have appealed.

Appeal of Des Moines Water Co., 48 Iowa, 324.

This would indicate that our Supreme Court does not consider that the Township Board of Equalization, composed of the township trustees, sits as a court of chancery, to entertain and determine difficult and important questions of state and federal law.

We respectfully submit that this Writ of Error should be dismissed.

E. E. COOK,
FRED HEINZ, AND
JOHN C. BILLS,
Counsel for Defendants in Error.

To A. J. HIRSCHL, ESQ.,

Counsel for Plaintiff in Error:

You will please take notice that the foregoing notice to dismiss the Writ of Error in this matter, will be submitted to the court on the foregoing brief, on Monday, the 10th of day of November, 1884.

E. E. COOK,
FRED HEINZ, AND
JOHN C. BILLS,
Counsel for Denfendants in Error.

Dated October 14th. 1884.

To A. J. Hirschl, Esq.,

Counsel for Plaintiff in Error:

You will please take notice that the foregoing notice to dismiss the Writ of Error in this matter, will be submitted to the court on the foregoing brief, on Monday, the 10th of day of November, 1884.

E. E. Cook,
Fred Heinz, and
John C. Bills,
Counsel for Defendants in Error.

Dated October 14th, 1884.

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Office Supreme Court U. S.
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SEP 13 1887
JAMES H. MCKENNEY,
CLERK.

No. 31.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1887.

THE DAVENPORT NATIONAL BANK,
Plaintiff in Error,
—*vs.*—
THE BOARD OF EQUALIZATION, ETC., *et al.*,
Defendants in Error.

FROM SUPREME COURT OF IOWA.

Reply Argument, by Plaintiff in Error, on the Merits and on Motion to Dismiss.

—BY—

A. J. HIRSCHL,
W. T. DITTOE.

L. M. FISHER,
C. A. FICKE,
E. E. COOK,
For Defendants in Error.

No. 31.

SUPREME COURT OF THE UNITED STATES.

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FROM SUPREME COURT OF IOWA.

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A. J. HIRSCHL,
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L. M. FISHER,
C. A. FICKE,
E. E. COOK,
For Defendants in Error.

ARGUMENT IN REPLY.

(Italics in quotations are mostly ours.)

The "*motion to dismiss*" was ordered submitted with the argument on the merits. We ask, therefore, that this argument be read before the motion is decided.

Defendants' argument has a tendency to evade the real questions in issue, and we feel justified in going over the several points suggested, although it be in part a repetition of what was contained in our opening argument. On the other hand, as to many things which might be here said by way of reply, we ask that our opening argument be again reviewed, wherein they will be found discussed by way of anticipation.

With this reply the cause is submitted on the first day of the October term, 1887, in accordance with the stipulation and order entered at close of last term.

QUESTION OF JURISDICTION.

As to the question of jurisdiction, we refer to our opening argument, and also to our brief and affidavits filed in response to defendants' affidavits and motion for dismissing the writ of error.

We do not desire to turn this court into an assessing or equalizing board We do not ask this court to decide upon *valuations*, but only upon *principles!* This is the only court which can give an ultimate decision upon the force and construction of *federal statutes* We claimed that, under Sec. 5219 of the Revised Statutes of the United States, a *share* in a national bank could not be taxed higher than a *share* in a State bank. The present statutes of Iowa tax the *shares* in the national banks at their cash values, and do not tax the *shares* in the State banks at all.

We claimed that consequently there is a violation of said Sec. 5219. But we have not claimed that the tax on the shares is void, and collection thereof subject to injunction; or that, if paid, that amount could be recovered from the county as having been erroneously or illegally exacted or paid, as provided by Sec. 870, Code of 1873. Quite the contrary, we have admitted, and do admit, that, so long as the bank does not make its complaint before the Board of Equalization, and so long as it pays such tax, it is a recognition of the fairness and equality of the tax, and the same cannot, after being thus paid, be recovered back by the bank from the city or county. *But* we have also claimed, and do yet claim, that the bank has the right to appear before the Board of Equalization and protest against paying any tax on its shares *eo nomine*, for the reason that the *shares* in the State banks *are not taxed at all;* and to couple such protest with an offer to submit itself to the same rule which is placed upon the State banks — namely, to be taxed upon the *capital.* And consequently, plaintiff in error, when before the Board of Equalization, offered to let the matter be truly "*equalized*," and, whilst demanding that the tax should be taken off of its *shares*, offered to let one be placed *upon* its *capital*, to the same extent and in the same manner as though it itself were a State bank, and not a national one. All these matters were proper for the consideration of the Board of Equalization, and then, on appeal, for the Circuit and Supreme Courts; but before all these tribunals, as is shown from the record, it was *decided* that Sec. 5219 does not prohibit the State from taxing the *shares* of the national bank, even whilst it exempts the *shares* of the State bank.

A clear-cut proposition laid down by the Supreme Court of Iowa, and subject to review here just as proposition 3d was reviewed in *People* vs. *Weaver*, 100 U. S., at page 541, and judgment was reversed and cause "remanded for further pro-"ceedings in conformity to this opinion."

And it is this question, and *only* this question, which your Honors are now called on to decide — namely: Does Sec. 5219

prohibit the State from taxing the *shares* of national banks, whilst exempting the *shares* of State banks? Your answer will be simply "Yes" or "No," and either way it will be the laying down of a *principle* of national importance, and there need be no apprehension that we want to turn the Supreme Court into a township board.

We beg to refer again to our brief filed in answer to defendants' motion to dismiss the writ. We repeat now, that had we commenced, by injunction or by suit, to recover back taxes already paid, then we would have been thrown out of court, because the State and United States Supreme Court decisions hold that the proper way is to apply in the first instance to the Board of Equalization. We have applied to that board, and prosecuted the case through the highest State court, which has denied us a right asserted under the federal statutes and constitution. And if your Honors now refuse to sit in review upon the decision of the State Supreme Court, it follows that that court is the *final* arbiter of the *federal* laws and constitution.

The State court is certainly the final arbiter of the State laws; and as the Supreme Court of Iowa has *decided* that a party aggrieved by a ruling of the Board of Equalization, in reference to Rev. Stats. U. S., Sec. 5219, may appeal to the State Circuit Court, and then *remove the cause to the federal court*, it must be apparent that such causes are regarded by the courts of Iowa just as other "suits," and hence may be carried to the State Supreme Court, and thence, on writ of error, up to this Court. That it has been decided by the Supreme Court of Iowa, as above stated, see *Richards* vs. *Incorporated Town of Rock Rapids*, 33 N. W. Rep., 372.

Indeed, the only way in which these various questions arising under Sec. 5219 can be presented to the courts, is by the party aggrieved going, in the first instance, before the Board of Equalization. The latest decision of this court is in *Stanley* vs. *Supervisors* (May 2, 1887), Vol. 7, U. S. Sup. Ct. Rep., 1234, in which it is held that, if the shares are over-

valued, the holder should have gone before the Board of Equalization in the first instance; that he cannot sue at law to recover what he has paid upon such overvaluation. We have gone before the Board of Equalization, and now ask the simple privilege of following up the action of the Board with such successive appeals and writs of error as the laws of the State and of the United States provide.

If Sec. 5219 has been violated, there "ought to be some remedy," but, naturally, many objections are made to any remedy asked by the banks, as was remarked, at the end of the opinion, in *Pelton* vs. *National Bank*, 101 U. S., 148.

THIS IS NOT A MOOT CAUSE.

The shareholders in the national banks of Iowa are entitled to all the favors which the State grants to the shareholders in the State banks.

Have they received them?

No! The "Transcript of Record" in this cause shows $400,000 of *shares* in national banks in Davenport taxable at their full cash value, and actually taxed at 35 per cent of the same, it being a custom adopted by the assessors to "scale down" all taxables to 35 per cent;* and it shows, also, *$350,000 of shares* in the State banks in Davenport which are not taxable, and not taxed *at one single cent.*

Is there anything "moot" about that?

Again: The Transcript shows that plaintiff in error has $200,000 of capital stock, and the other national banks $200,000 more, of which ($33\frac{1}{3}$ per cent) $133,333, by force of law, is presumed to be and must be, from their organization and constantly thereafter, held and kept in *government bonds*, on deposit in Washington; and that, too, whether the banks see fit to make use of their "circulation" or not. (See Rev. Stats. U. S., Sec. 5159 *et seq.* See, also, 7 U. S. Sup. Court Rep.,

*Assessors ordinarily do something like that. See *Cummings* vs. *M. N. Bank*, 101 U. S., 162.

833, near bottom.) The Transcript shows, also (page 9), that the Davenport Savings Bank had on hand $40,000 in government bonds; that both savings banks together had $350,000 of capital stock which they could at any time invest in government bonds, and thus reduce the taxable amount. (See 54 Iowa, 609, *German-Am. Sav. Bank* vs. *Burlington.*) Whether they have actually invested their capital in government bonds or not, it is not necessary for us to affirmatively prove. "The constitutional validity of law is to be tested, not "by what has been done under it, but by what may, by its au- "thority, be done." (See, again, citations in opening argument, page 6.) A few illustrations will suffice to prove the correctness, indeed necessity, of this rule.

Suppose a railway company places its fare from Davenport to Des Moines at $10 apiece upon all naturalized citizens, and only $5 upon all native born. One of the former tenders the conductor $5, but is ejected, and sues for damages. Would he be required to prove that there was then and there in fact upon that same train, or on any prior train, a native born who accepted and enjoyed the $5 rate? Or, on the other hand, would it be a defense to the company to prove that they were carrying many native-born citizens, who, without exception (from a spirit of magnanimity, perhaps), were paying the $10 rate? Certainly the mere fact that the one class has the opportunity of riding at $5 would make such a schedule an illegal discrimination, whether anybody accepts the $5 rate or not.

Suppose the $400,000 of national bank shares in Davenport were taxable at $2 per $100, and the $350,000 of State bank shares at $1 per $100. Would that not be in violation of Sec. 5219? And that, too, even if the State banks, through a feeling of pride or magnanimity, should voluntarily pay $2 per $100?

Is it not, therefore, a violation of Sec. 5219, if the national bank shares are put in at cash value, and the State bank shares at no value at all? In the similar case of *Hubbard* vs. *Supervisors*, 23 Iowa, 133, this was held to be a prohibited discrim-

ination, although there were, in fact, *no State banks in existence at all;* but, in the case at bar, the Transcript shows that there are State banks, in the same city with complainant, having *$350,000 in shares* of capital stock untaxed and untaxable.

There are many of these savings banks in Iowa, also many others (not national), which, by filing a mere declaration to that effect, can make themselves savings banks (see former argument); but we insist that any statute which extends to State banks favors not offered to national banks is a standing menace to the latter, impairing the ready negotiability of (and consequently depreciating) its shares, and that, too, whether any State bank is in existence or not, as the danger of its coming into existence to avail itself of such favors would, in such a case, be not only probable, but imminent.

The State should not deter capital from seeking investment in national bank shares. This court, in considering the purpose of Sec. 5219, says: "It became necessary to prohibit the "States from imposing such a burden as would prevent the "capital of individuals from *freely seeking investment* in" [the national banks.] (7 U. S. Sup. Ct. Rep., 835, top.)

If it be unnecessary to prove that State banks are in existence, it is certainly unnecessary to prove that they have in fact invested their capital in non-taxable property.

The case of *Supervisors* vs. *Stanley*, 105 U. S., 305, cited by counsel on page 5, is not analagous to the question under discussion. The decision — undeniably correct — in that case was that complainant must prove the following factors:

(*a*) That he holds shares in a national bank.

(*b*) That the law *allows* holders of other shares to deduct debts therefrom.

(*c*) That *he* has debts to be deducted.

That is all he must prove; but counsel argue, by inference, that this court has decided that he must prove another factor somewhat as follows:

(*d*) That *some other person* is in fact deducting debts from *his* shares.

We insist most respectfully that this court has decided no such a thing. It did not say that Stanley must prove that *some other person* is deducting debts from his shares, and it will not decide in our case that we must prove that *some other bank* is in fact deducting bonds from its capital. Hence, when the gentlemen say, "We respectfully inquire what legal interest has the Davenport National Bank in this matter, if none "of the savings banks of Iowa have any of their capital invested in non-taxable securities?" we beg leave to answer that it has the same interest that Stanley would have had, had he shown that *he* had debts to deduct (in which case this court would surely not have required him to show furthermore that *some other person* also had debts to deduct, or, in fact, was deducting them).

In *People* vs. *Weaver*, 100 U. S., 539, complainant Williams was not required to prove that some other person was deducting debts from capital.

We insist confidently that we have proved all the elements deemed, in the Stanley opinion, necessary — to-wit:

(*a*) That we hold shares in a national bank.

(*b*) That the shares in State banks are *not taxed at all.*

(*c*) That deducting the whole tax from our shares would leave them untaxable.

We insist that it is not necessary for us to prove that the State banks, which are not taxed on their shares at all, but on their capitals — that they *have in fact* deducted bonds therefrom, no more than Stanley has been held required to prove that *some other person* was in fact deducting debts.

Neither is complainant required to prove that it has bonds which are to be deducted from its own capital. Complainant *makes out its case* by showing that *its shares* should be released from tax because the State bank *shares* are not taxed *at all.*

This is all it need do.

This it has done.

It has, however, gone further, and at every stage of the case offered, *and now offers*, purely as a matter of equity and fair dealing, in case the tax be stricken from its shares, that it will pay the same tax upon its capital as would be assessable upon a State bank holding the same capital. To ascertain the amount which would be thus assessable, an accounting could be ordered by this court, or by the State Supreme Court,* on the case being remanded there; and, *upon such accounting*, it would be the duty of complainant, if desirous of reducing the face taxable value of its capital more yet than the $33\frac{1}{3}$ per cent presumed to be in bonds, to prove affirmatively to what extent said capital is invested in government bonds or other non-taxables.

The supplemental opinion in *Supervisors* vs. *Stanley* shows that the cause was remanded for *taking further evidence*, if necessary. (105 U. S., 318, bottom.)

Evidently, thus far, complainant has not been called on to prove, nor had the opportunity of proving, the status of its capital. The rights alleged by plaintiff to be protected under Sec. 5219, also under the federal constitution, have been denied it at every step of the case. The highest State court has decided only one proposition, and that purely as a *matter of law;* and a "writ of error" is preëminently the instrument for testing the correctness of such a decision. That decision, as stated in the Transcript, was that Sec. 5219 does not prevent the State from taxing the shares in the national banks, whilst exempting those in the State banks.

That is the only decision before your Honors, and the correctness thereof we most respectfully insist it is your province to pass upon.

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*As was done in *Frazer* vs. *Siebern*, 16 Ohio St., 625.

ARE THE SHARES IN THE SAVINGS (?) BANKS TAXABLE?

It really makes no difference, for the purposes of this writ of error, whether they are or not, inasmuch as it was urged upon the State Supreme Court to decide that they are, and that hence there is no discrimination; but that court refused to so hold, and said (Transcript, p. 12), "As to whether sav-"ings bank shares are taxable, we do not determine."

And then proceeds: "We have reached the conclusion that, "*even if they are not*, the taxation of national bank shares is "not, within the meaning of the statute, at a greater rate than "is assessed upon other moneyed capital;" by which decision that court has most peremptorily denied us the rights asserted under the federal constitution and statutes; and we insist that the correctness of this denial is now properly before this court for review.

The State court, evading a decision upon the meaning of the State statutes, says that it will *not* determine whether the State bank share is taxable, but it *will* determine what the *federal* statute does mean; and now counsel insist that this court, the final arbiter upon the national laws, shall *not* determine what the *federal* statute means, but shall decide this case by holding that the State bank share is in fact taxable. A very pretty transposition of jurisdictions this would indeed be, and a most unjust way of playing "battledoor and shuttlecock" with litigants who are honestly endeavoring to assert and protect those rights which Congress has granted them.

But if it be deemed material for us to show that savings (?) bank shares are not taxable, we can now do so in a very few words.

In *Hubbard* vs. *Supervisors*, 23 Iowa, 130, the following words were held to exempt the State bank share from taxation: "Taxes shall be levied on and paid by the corporation, and not "upon the individual stockholders." Thereafter the Legislature (impliedly) repealed that statute by the act of 1868, as

construed in *Morseman* vs. *Younkin*, 27 Iowa, 354. But, lo and behold! in full view of the meaning of these words, and in full view of the effect attributed to them by the Supreme Court, the Legislature in 1874 *re-enacts* them in the savings (?) bank law, viz.: "Taxes shall be levied on and paid by the banks, "and not the individual stockholders." (Laws 15th General Assembly, Chap. 68, Sec. 28.) And the other significant words construed in the *Hubbard* case, from Revision 1860, 732 (3), are preserved intact in Code of 1873, 821 (3): "Amount of "stock or shares in any corporation or company not required "by law to be otherwise listed and taxed."

This case of *Hubbard* vs. *Supervisors* is the law of Iowa to-day; it has never been overruled, modified, nor questioned.

The authorities cited by counsel on their pages 9–15, were, without exception, cases involving the general laws relative to taxation, and under these the *shares* as well as the *capital* of certain corporations were held taxable; but these general laws contain *no such provision* as was construed in the *Hubbard* case, and as is now included in said savings bank law (Laws 15th General Assembly, Chap. 68, Sec. 28). So also as to the decision cited by counsel on page 12 — *Henkle* vs. *Town of Keota*; whilst it involved a bank, yet that was not one of the so-called savings banks, and hence was not entitled to the benefits of said Chap. 68, Sec. 28, Laws of 15th General Assembly, and did not claim to be.

The phrase, "Taxes shall be levied on and paid by the banks, "and not the individual stockholders," has not been construed in *any case* subsequent to *Hubbard* vs. *Supervisors*, and the construction there placed upon it must control now. As the decisions stand, it is not an open nor original question for this court to pass upon, or to hold that, in spite of this phrase, the shares are taxable. Hence, all of counsel's labored and elementary argument, to the effect that taxation is the rule, and exemption the exception, is utterly misapplied; but even were it applicable, it would be well for counsel to remember that a *quasi double* taxation should not be inferred unless required

by "the express words of the statute." (Cooley on Taxation, p. 165, cited in *Cook* vs. *Burlington*, 56 Iowa, 253. See, also, *Tennessee* vs. *Whitworth*, 117 U. S., 129, 136; s. c. 6 Sup. Ct. Rep., 647, cited in *City of New Orleans* vs. *Houston*, 7 U. S. Sup. Ct. Rep., 205, middle.) Much less, then, can it be inferred in reference to these savings (?) bank shares, when the "express words of the statute," as construed in the *Hubbard* case (still unquestioned), exempts them.

IS SEC. 5219 APPLICABLE TO THE (ALLEGED) SAVINGS BANKS?

We freely admit that if they were in reality "savings banks" in the true sense of that term, then there might be some excuse for taxing them by one method, whilst taxing the national banks by another.

Let it be remembered, once for all, that the very recent decision of this court in the case of *Mercantile National Bank* vs. *New York* (April 4, 1887), 7 U. S. Sup. Ct. Rep., 826, does not decide the questions involved in the case at bar.

It decides that the State may tax the *shares* in national banks, although exempting the *deposits* in savings banks.

In Iowa the *deposits* in savings banks are exempt (Acts 15th General Assembly, Chap. 60, Sec. 28); but we have never complained of this. The "deposit" made by the industrious artisan is not "moneyed capital similar" to the "shares" held by the wealthy capitalist. "Deposits are not capital stock in "any point of view."

Society for Savings vs. *Coit*, 6 Wallace, 609 (middle).

We have complained and do complain because the *shares* are exempt.

"Shares" in one bank are certainly "moneyed capital sim-"ilar" to "shares" in another bank. (See our former argument.)

The question was not before your Honors in the *Mercantile National Bank* case whether that bank would have been en-

titled to relief had it shown that the *shares* in the State savings banks were exempt.

This question was not before you, for the very good reason that the New York savings banks are in truth "savings banks," and being organized *without capital stock, have no shares at all.* (See Paine's Banking Laws of New York, 1885, Chap. X.)

The remarks made in the *Mercantile* case about savings banks being of a *quasi-charitable* nature are very appropriate to those in New York.

True savings banks are very correctly described in *Huntington* vs. *Savings Bank*, 96 U. S., 394, 395, as having no *capital stock*, nor right to do a *commercial business*, but being "intended "only for provident investment, in which the management and "supervision are entirely *out of* the hands of the parties whose "money is at stake, and which are *quasi*-benevolent and most "useful, because they hold out no encouragement to *speculative dealing* or *commercial trading.* This was the *original* "idea of savings banks." * * * * "The bank derives "*no benefit whatever* from any deposit or the produce thereof." "Very many such exist in this country." * * * "They "exist also in *New York*, Pennsylvania, Maine, Connecticut, and "other States. Indeed, until recently, the primary idea of a "savings bank has been, that it is an institution in the hands of "*disinterested* persons, the *profits* of which * * * inure "*wholly* to the benefit of the *depositors.*"

"Savings institutions undoubtedly exist which were established "*solely* for charitable purposes, and many of them are "conducted in the spirit in which they were established, as a "means of benefiting the indigent; and it is plain that Congress intended to exempt all such from the taxation imposed "by the body of the section; but *it is equally well known* that "there is another large class of such institutions which are "doing *an extensive and profitable business*, and, being the depositories of vast sums of money, are earning large profits "which are *as justly subject to taxation* as the profits of any "other banking corporation in the country."

Oullon vs. *Savings Institution*, 17 Wallace, 120, 121.

"Courts of justice also, as well as text writers, recognize "the *well-known distinction* between banks of *deposit* and banks "of discount." * * *

Bank for Savings vs. *The Collector*, 3 Wallace, 513 (top).

Now examine the provisions and operation of the savings (?) banks of Iowa, as contrasted with those described in the foregoing opinions, and it will be found that they are diametrically opposite upon every material point. These Iowa institutions *have* "capital stock;" they *do* a "commercial business," having power (Sec. 9) "to *discount*, purchase, sell, and make "loans upon *commercial* paper, notes, bills of exchange, drafts, "or any other *personal* or public security." The management is not *out of*, but *in the* hands of the parties whose money is at stake. They *do* hold out encouragement to speculative dealing and commercial trading. They are not established "solely "for charitable purposes." They do "an extensive and profit- "able business."

They are, in every respect, banks of *discount* and deposit — indeed, counsel so concede (page 31, below center), and say "savings banks are simply and purely banks of *discount* and "deposit." We insist they were designed to possess all the powers and advantages of national banks (except the "circula- "tion"), and, in addition thereto, the power of loaning money on real estate, which, however, does not distinguish them from national banks, but confers on them only an additional advantage. It distinguishes them, if at all, only in the same manner that a man with two hands is to be distinguished from his neighbor who has but one. The savings bank law of Iowa is studied and calculated to make a system of *State banks* which shall be and is the *fac simile* of the national system, excepting as "distinguishable" as aforesaid, and excepting the "circu- "lation," which, however, as shown in our opening argument, should make no difference.

Not only the plan, but the *very language* of the national bank law, is copied in this State law. A few illustrations, as now given, will suffice:

FROM SAVINGS BANK LAW. *Chap. 60, 15th Gen. Assembly.*	FROM NATIONAL BANK ACT.
Sec. 2. Provides for a *capital.*	Sec. 5138. Provides for a capital.
Sec. 2. There shall be not less than five incorporators.	Sec. 5133. There shall be not less than five incorporators.
Sec. 3. Articles essentially as in Sec. 5134.	Sec. 5134. Articles of incorporation.
Sec. 10. Provides for cases in which bank may obtain real estate (similar to Rev. Stats. U. S., Sec. 5137).	Sec. 5137. Provides for obtaining real estate in certain cases.
Sec. 5 and Sec. 9 (fifth). Certificate of Auditor of State and powers of the corporation essentially as in Sec. 5136 Rev. Stats. U. S.	Sec. 5136. Certificate of Comptroller and powers of the corporation.
Sec. 6. Not less than five directors.	Sec. 5145. Not less than five directors.
Sec. 6. Concerning elections and officers, essentially as in Rev. Stats. U. S., Secs. 5144–5149.	Secs. 5144–5149. Concerning elections and officers.
Sec. 12. Shares of stock are personalty, and transferable on the books. Shareholders are under a "double liability."	Sec. 5139. Shares of stock are personalty, and transferable on the books. Sec. 5151. Shareholders are under a "double liability."
Sec. 18. Limits loans to any one person.	Sec. 5200. Limits loans to any one person.
Secs. 20, 21. Punishes unauthorized use of name "savings."	Sec. 5243. Punishes unauthorized use of name "national."
Sec. 22. Statements required.	Sec. 5211. Statements required.
Sec. 23. Special reports and examinations provided for.	Sec. 5211. Special reports provided. Sec. 5227. Special examinations provided for.
Secs. 26, 27. Punishment of fraudulent officers.	Secs. 5208, 5209. Punishment of fraudulent officers.
Sec. 30. May be dissolved on three-fourths vote.	Sec. 5220. May be dissolved on two-thirds vote.

Counsel grasp at a straw by attempting (page 31) to distinguish these State banks from the national banks, on the ground that the latter are banks of issue.

In *Lionberger* vs. *Rouse*, 9 Wallace, 468, the decision was merely to the effect that Sec. 5219 did not apply to a State

bank holding exemption under a preëxisting charter (contract) since 1857. Mr. Justice Davis then, by way of a *dictum*, speaks of the difference between the acts of 1868 and 1864. That this was merely a *dictum* is shown in *City Nat. Bank* vs. *Paducah* (U. S. Cir. Ct., Ky., 1877), 5 Cent. Law Jour., 347.

The act of 1864 had two clauses: —

(*a*) That national bank shares should be taxed not higher than other moneyed capital;

(*b*) Nor higher than State bank shares.

Admitting now that clause (*b*) referred to State banks of *issue*, as is to be inferred from the said *dictum*, does it not then follow that clause (*a*), which is preserved in the act of 1868, refers to State banks, like the present, which are not banks of issue?

It will furthermore be observed that the first clause of the act of 1864 related to the *valuation*, and the second to the *rate;* but the act of 1868, containing both these elements,* provides that "*the taxation*," etc.

This question is, however, set at rest by the decision of this court, saying "Of course, so far as investments in such [State] "banks are moneyed capital in the hands of individuals, they "are included in the clause as it now stands."

Mercantile Nat. Bank vs. *New York, supra.*

We have shown in the first argument that a *share* in a national bank is "moneyed capital" in the hands of an individual citizen, and that a *share* in a State bank is *other* moneyed capital in the hands of *another* individual citizen, and of a similar nature.

We have shown the powers of *discount and deposit*, and others, possessed by these so-called savings banks in Iowa. They are not such banks as this court had in mind in the latter part of the opinion in the *Mercantile* case, when saying, "They are what their name indicates — banks of *deposit*, for

* "Valuation" and "rate" together constitute taxation.—101 U. S., 158.

"the accumulation of small savings belonging to the industri-
"ous and thrifty."

But they are (from their powers above shown), in every sense of the word, such institutions as this Court, in that same opinion, describes as covered by the term "moneyed capital" in the meaning of Sec. 5219, viz.: issuing notes (if it be a bank of issue), receiving deposits payable on demand,* discounting commercial paper, making loans on collateral security, buying and selling exchange, negotiating loans, and dealing in negotiable securities. The test of the whole question is most happily and tersely summed up thus: "Moneyed capital" therefore includes "*shares of stock* or other interests "owned by individuals in all enterprises in which the *capital* "employed in carrying on its business *is money*, where the ob-"ject of the business is the making of *profits* by its use *as* "*money*."

IS THE DISCRIMINATION SUBSTANTIAL?

The gentlemen argue, and the State Supreme Court decides, that, although the State bank shares may be exempt, yet this makes no substantial discrimination, insisting that the taxation of the State banks on capital and surplus is equivalent to the taxation of the national banks on their shares.

In response to this position, we quote: "Inasmuch as the "capital of the State banks may consist of the bonds of the "United States, which are exempt from State taxation, *it is* "*easy to see* that this tax on the capital is not an equivalent "for a tax on the shares of the stockholders."

Van Allen vs. *Assessors*, 3 Wallace, 581 (bottom).

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*The sixty days, of which counsel speak, of which they can avail themselves in repaying deposits, is in the discretion of the bank. It is never used, unless in a case of panic or other emergency. For construction of a similar clause, see *Oulton* vs. *Savings Bank*, 17 Wallace, 122. Under Sec. 5136 (6th and 7th) the national banks might well adopt a similar emergency clause — perhaps some of them do.

And this was said in a case in which the national bank shares were taxable only at *par*, whilst in Iowa they are taxable at *cash* value.

Van Allen vs. *The Assessors*, *supra*, is the law of this court to-day, cited in the *Mercantile National Bank* case, *supra*; and the court, speaking again of the fact that bonds are deductible from the capital, says: "The effect of this was, of "course, to discriminate to a very important extent in favor "of investments in State banks," and against national banks taxed "at a value necessarily and largely based on the value "of the government securities in which, *by law, a large part* "of the capital of the bank *was required* to be invested." (7 U. S. Sup. Ct. Rep., 833, bottom.)

It should be remembered that there are many other non-taxables which can be deducted from the assessable capital. (See again our opening argument, pp. 5–7.)

Assessment of the *capital and surplus* together is by no means an equivalent for an assessment of the shares; and for the very good reason that the government bonds and other non-taxables are as readily *deductible from surplus* as from capital.

Furthermore, the capital and surplus do not always represent the aggregate value of the shares. For instance: a bank has $100,000 capital and $10,000 surplus; it does a large business, and pays 20 per cent dividends right along, with every indication of continuing to do so. Would each share be worth only $110? By no means! Its "cash" value, at which it is assessable under the laws of Iowa, is the same as its "salable" value (101 U. S., 162, bottom); and no one can doubt that it would sell for $150 or over.

Counsel attempt to argue that the decision in the *Mercantile National Bank* case, *supra*, is in their favor, inasmuch as it is there held that a national bank share is taxable, although shares in the (New York) trust companies are not taxed. But the reason for this is given in the opinion, thus: "It is

"evident, from this enumeration of powers, that *trust com-*
"*panies are not banks*, in the commercial sense of that word,
"and do not perform the functions of banks."

So *People* vs. *Commissioners*, 4 Wallace, 256, was decided on the ground that *insurance* companies are not banks, as they do not compete with banks.

We feel confident that we have shown, from the "enumera-
"tion of powers" of the Iowa institutions, that they are banks, and perform the functions of banks.

Counsel say: "If the right to invest funds in notes, com-
"mercial paper, etc., makes the savings banks formidable
"rivals of the national banks, then every individual who holds
"the promissory note or commercial paper of another would
"be an equally formidable rival." To this very astute remark we beg leave to say that national banks are to be protected even against taxation which discriminates in favor of individual (*i. e.*, unincorporated) banking establishments (see *Pelton* vs. *C. N. B.*, 101 U. S., 539). Much more, then, when the State *incorporated* concerns are favored. (Please read again pages 7 – 9 of first argument.)

It cannot admit of doubt that the present statutes of Iowa violate the rule laid down in *Boyer* vs. *Boyer*, 5 U. S. Sup. Ct. Rep., 712 (near end of opinion), in which it is said: "Capital
"invested in national bank shares was intended to be placed
"upon the same footing of substantial equality in respect of
"taxation by State authority as the State establishes for other
"moneyed capital in the hands of individual citizens, however
"invested, whether in *State bank shares* or otherwise."

It is very true, as stated in that opinion, and also in the opinion of the Supreme Court of Iowa, and as is argued by counsel, that an exact equality is not obtainable, and that different kinds of property should be, and properly are, taxable by different methods.

But we have insisted, and do insist, that a very simple and practicable law can be made which will be just and fair to the

national and to all other banks, and will be the same for them all, and will tax *shares* in all the different kinds of banks.

Such laws exist now in every State in the Union, except Iowa. We made this assertion in the opening argument; counsel neither admit nor deny it. It may be of interest to this court to compare the statutes of other States. If so, they can be found as follows:

Colorado — Gen. Laws 1877, p. 747, Secs. 16, 17.
Delaware — Code 1852 (amended 1874), p. 45.
Georgia — Code 1873, Sec. 815.
Illinois — R. S. 1880, p. 875, Sec. 35.
Indiana — Revision 1876, Vol. I., p. 89, Sec. 62.
Kansas — Laws 1879, p. 62, Sec. 22.
Kentucky — Act of April 9, 1878; G. S. 1879, p. 711.
Louisiana — R. S. 1876, p. 829.
Maine — R. S. 1871, Chap. 6, Title 1.
Maryland — Laws 1874, Chap. 483, Sec. 83.
Massachusetts — P. S. 1882, Chap. 13, Sec. 8. (Does not include savings banks. They have *no capital*, and are otherwise taxed.)
Michigan — Laws 1871, Chap. 21.
Minnesota — Laws 1877, p. 29, Sec. 7 (after a great deal of legislation and litigation).
Nebraska — G. S. 1873, p. 938; Laws 1875, p. 97.
Nevada — Laws of 1873.
New Hampshire — Gen. Laws 1867, Chap. 58. (See 56 N. H., 38.)
New York — Laws 1880, Chap. 596.
North Carolina — Laws 1881, Chap. 116.
Ohio — R. S. 1880, Sec. 2762.
Oregon — Gen. Laws, Chap. 57, Title 1, Sec. 6.
Pennsylvania — P. S., I., 142, Sec. 86.
Rhode Island — P. S. 1882, p. 124, Sec. 9.
South Carolina — R. S. 1872, p. 57, Sec. 32.
Tennessee — Laws 1873, Chap. 118.
Vermont — R. S. 1880, Secs. 283 – 289.

Virginia — Laws 1873, Chap. 33, Sec. 60, p. 305.
West Virginia — R. S., Chap. 186, Sec. 68.

In the following States the bank shares (of all kinds) are taxed the same as shares in other corporations:

Florida — Laws 1872 – 73 (No. 1).
Mississippi — Laws 1880 and 1881.

All corporate and individual bankers are taxed alike in —

Arkansas — Laws 1874, Sec. 5083.
Missouri — Wagner, 1872, pp. 1158, 1159.
Texas — Paschall, 1870, p. 863, art. 5163.
Wisconsin — R. S. 1878, Sec. 1042.
New Jersey — (Statutes not fully stated).

Connecticut taxes all alike, excepting as to non-resident shareholders (R. S. 1875).

California had a discriminating statute, and the same was held invalid by the State Supreme Court. (*Miller* vs. *Heilbron*, 58 Cal., 141.)

Alabama also, and held invalid. (*Pollard* vs. *Zuber*, 65 Ala., 635.)

The State of Iowa could and should enact a law taxing alike the *shares* in all incorporated banks.

The 20th General Assembly, and again the 21st, as shown from their Journals, rejected such laws when offered. The Supreme Court has decided that Sec. 5219 is no protection to the banks. If this court does not make some unmistakable utterance to the contrary, the act of Congress in question, and indeed any act of Congress, or provision of the federal constitution, is apt to be ignored by any State legislature or court.

Respectfully submitted by

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